Great Expectations: Women in the Legal Profession: A Commentary on State Studies

Ann J. Gellis

Indiana University Maurer School of Law, gellis@indiana.edu

Follow this and additional works at: http://www.repository.law.indiana.edu/ilj

Part of the Law and Gender Commons, and the Legal Profession Commons

Recommended Citation
Available at: http://www.repository.law.indiana.edu/ilj/vol66/iss4/2
Great Expectations: Women in the Legal Profession,  
A Commentary on State Studies  

ANN J. GELLIS*  

INTRODUCTION  

In July 1988, the Indiana State Bar Association formed the Commission on Women in the Profession (the "Commission"). During the period 1970 to 1988, the percentage of women lawyers in the United States had increased from 3% to 20%. Yet, the numbers of women reaching higher positions within the hierarchies of legal organizations did not correspond to the numbers of women lawyers. The Commission was created in response to growing, nationwide concern and publicity that a "glass ceiling" exists for women lawyers. Were women in the legal profession participating on an equal footing with men?  

The American Bar Association’s Commission on Women in the Profession held hearings in 1988, and in August 1988, it issued its report on the status of women lawyers. The ABA Report found persistent gender discrimination throughout the legal profession. The report of the Indiana Commission (the "Indiana Bar Report") was issued on October 18, 1990. Consistent with survey data from other states and the findings of the ABA Report, the Indiana Bar Report found that gender bias was prevalent in the legal profession in Indiana: "Our findings make clear that many women lawyers in Indiana are not treated equally with men. Disparate treatment of men and women is found in the courtroom, in salary levels, in opportunities for

---

* Associate Professor of Law, Indiana University School of Law at Bloomington. The author served on the Indiana Commission on Women in the Profession. The author expresses her appreciation to the other members of the Commission for their insights about the problems of gender bias in the profession and to Suzanne Buchko, Maxine S. Grolnick, Lynne Henderson and Lauren Robel for their helpful comments on this work.


3. Women in Law: The Glass Ceiling, A.B.A. J., June 1, 1988, at 49; see also Women in the Law Aren’t Yet Equal Partners, N.Y. Times, Feb. 12, 1988, at B7, col. 3 (Studies demonstrate that women attorneys are not advancing as quickly as their male counterparts and that women attorneys disproportionately occupy low-prestige jobs.); Still a Long Way to Go for Women, Minorities, Nat’l L.J., Feb. 8, 1988, at 1, col. 4 (From 1982 to 1988, the number of women partners increased only 1% per year; if this pattern continues, by the year 2000, only one in five partners will be female.).

4. ABA Report, supra note 2, at 3-4.
advancement, and in the day-to-day interchange among colleagues."

This commentary is divided into two parts. Part I reprints the summary and findings of the *Indiana Bar Report*. Part II relates the findings of the *Indiana Bar Report* to findings in other state surveys and reports and explores what these mounting data reveal about the role of women in the legal profession. The data make clear that the "glass ceiling" phenomenon is not just an issue of advancement and promotion. A system of complex and interrelated barriers exists which pushes women to make fundamentally different "choices" than men, both in terms of the directions of their careers and in terms of their personal lives. These barriers run the gamut from overt discrimination in hiring and compensation to more subtle, and less visibly distinct, sociological barriers. The structures and methods of practice in the legal profession remain overwhelmingly male-defined, and the work environment is full of sexual static.

I. Indiana Bar Report on Women in the Profession

The *Indiana Bar Report* is based on the information obtained from a survey of members of the Indiana bar. A written questionnaire was sent to 2,190 members of the Indiana bar (1,095 men and 1,095 women) who were chosen randomly from a list of 10,349 lawyers registered with the Indiana Supreme Court. Seventy-three percent of those surveyed responded. The following is a reprint of the summary of contents and findings sections of the *Indiana Bar Report*:

II. Summary of Contents and Findings

The Report that follows outlines the results of our study of women in the legal profession in Indiana. Part III focuses on the demographic information about women in the Indiana bar. Part IV identifies major areas of similarities and dissimilarities between women and men in their attitudes and perceptions about the legal profession in general, and the role of women specifically. Part V addresses the differences we find between men and women in terms of the kinds of accommodations made by them to balance their careers with their family responsibilities.

---


6. The sampling procedure used for the survey resulted in a higher proportion of female lawyers in the survey population than in the state. *Id.* at 9. (Women constitute 15% of the bar in Indiana. *Id.* at 10.) Equal numbers of female and male lawyers were sampled in order to have a sufficient number of female lawyers to make statistically valid statements. *Id.* at 9.

7. Eighty percent of the women and 68% of the men responded. *Id.*

8. The remainder of Part I of this Article is reprinted from the *Indiana Bar Report*, supra note 5, at 11-40.
As lawyers, judges and legal educators we are committed to a legal system that is fair and without bias. Our profession should be open to all on equal terms. Our findings make clear that many women lawyers in Indiana are not treated equally with men. Disparate treatment of men and women is found in the courtroom, in salary levels, in opportunities for advancement, and in the day-to-day interchange among colleagues. Most women perceive gender bias; most men do not. Significant numbers of women report overt discrimination, including physical and verbal sexual harassment. More subtle forms of discrimination in terms of attitudes and perceptions about women lawyers are also prevalent.

Moreover, women continue to bear most of the family responsibilities. It is women who carry the burden of child care, and not their male counterparts who also have children and, in large numbers, working partners. Women often find themselves forced to choose between a career and children. Lack of day care facilities and part-time work opportunities are a major impediment to full integration of women in the profession.

Indiana may take small comfort in that it is not alone in its failure to meet the standard of a bias-free profession. Our data mirror closely data reported in the 1988 ABA report and the statistical data from other states, including, among others, California, Maryland, Massachusetts, and New Hampshire.

III. Demographic Profile

Women constitute approximately 15% of the bar in Indiana. As has been found in other studies, women are younger and have been in practice for fewer years than their male counterparts. More than 70% of the women are under forty years of age, compared with 43% of the men. The median age is 35 for women and 41 for men. Seventy-one percent of the women have graduated from law school since 1980, with 92.3% having graduated since 1975. Comparable numbers for the male population are: 31.5% graduated in the period 1980-89 and 50.8% graduated in the period 1975-89. Nationally, 80% of women lawyers have entered the profession since 1970.

The years in practice for women naturally mirror the statistics for graduation. Over ninety percent (93.6%) have practiced less than fifteen years.

<table>
<thead>
<tr>
<th>Table One</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Years in Practice</strong></td>
</tr>
<tr>
<td>Female</td>
</tr>
<tr>
<td>Male</td>
</tr>
</tbody>
</table>

There is a consistent pattern of women having practiced less time than their male counterparts. For example, for those who graduated between
1980-84, 98% of men have practiced 5-9 years (the period which corresponds with the years of graduation), whereas only 86% of women have practiced 5-9 years. Thirteen percent of the women have practiced less than five years, compared with 1.6% of the men.

In terms of where women lawyers work, we found that fewer women are in private practice than men (53%, 74%). They are more highly represented than men in state or local government jobs (16.6%, 5.1%) and in corporate jobs (11.1%, 7.7%).

<table>
<thead>
<tr>
<th>TABLE TWO</th>
<th>TYPE OF EMPLOYMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Females</strong></td>
</tr>
<tr>
<td>Academic</td>
<td>2.9%</td>
</tr>
<tr>
<td>Federal</td>
<td>2.3%</td>
</tr>
<tr>
<td>State or Local Government</td>
<td>16.6%</td>
</tr>
<tr>
<td>Corporate</td>
<td>11.1%</td>
</tr>
<tr>
<td>Judiciary</td>
<td>3.4%</td>
</tr>
<tr>
<td>Public Interest/Legal Services</td>
<td>3.7%</td>
</tr>
<tr>
<td>Private Practice-Law Firm</td>
<td>39.4%</td>
</tr>
<tr>
<td>Private Practice-Sole</td>
<td>13.3%</td>
</tr>
<tr>
<td>Other</td>
<td>7.2%</td>
</tr>
</tbody>
</table>

In looking at differences between first jobs and current employment, women and men alike shift from law firms to sole practice. The percentage of females in sole practice increased 4% (from 9% to 13%), while the percentage of males in sole practice increased 7% (from 13% to 20%). The percentages in state and local government jobs decreased for both women and men. Twenty-one percent of women and 11% of men began their legal careers in state or local government. Employment in corporate jobs increased for both.

A majority (52.1%) of men do not have any female lawyer colleagues in their place of work. Excluding persons in sole practice, 45% of men do not have female lawyer colleagues. Thirty-one percent of the women work in firms or organizations where they are the only woman. Less than a quarter (23%) of all male lawyers work in firms or organizations with three or more women, whereas over 43% of the women work in firms or organizations with three or more women.

By correlating the answers with respect to the number of women lawyers in a respondent’s firm or organization with the answers as to the respondent’s present legal job, we were able to determine where there are women lawyers.

---

9. Throughout this Report, the first number in the parentheses relates to females; the second to males.
WOMEN IN THE LEGAL PROFESSION

lawyers in sizable groups. Percentages of lawyers who report having four or more female lawyer colleagues by type of organization are as follows:

- academic — 31%
- federal — 31%
- state and local government — 25%
- corporations — 25%
- public interest/legal services — 49%
- judiciary — 2%
- law firms — 10%

These figures reflect both the higher representation of women in public interest, government and corporate jobs, as well as the fact that small law firms predominate in Indiana. Sixty-three percent of lawyers in Indiana law firms work in firms with 10 or fewer lawyers.

Forty percent (39.4%) of all women lawyers work in private law firms (as distinguished from sole practice). More women are practicing in large cities (62%, 54%). Twenty-eight percent of men practice in large (17%) or small (11%) towns, while 12% of women practice in large towns and only 6% practice in small towns.

Not surprisingly, fewer women are partners. Thirty percent of women in law firms are partners, compared with 68% of men. The period of time before partnership, moreover, is longer for women. (The survey did not determine the distribution of women partners by size of law firm.)

**Table Three**

<table>
<thead>
<tr>
<th>Number of Years in Practice Prior to Partnership</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-1</td>
</tr>
<tr>
<td>---</td>
</tr>
<tr>
<td>Female</td>
</tr>
<tr>
<td>Male</td>
</tr>
</tbody>
</table>

More women than men work part-time (15%, 8%). Table Four shows the distribution of part-time lawyers among the types of organizations. Within law firms, the larger the firm, the fewer people who work part-time.

**Table Four**

<table>
<thead>
<tr>
<th>Part-time Lawyers — Distribution by Job</th>
</tr>
</thead>
<tbody>
<tr>
<td>Academic</td>
</tr>
<tr>
<td>Federal</td>
</tr>
<tr>
<td>State or Local Government</td>
</tr>
<tr>
<td>Corporate</td>
</tr>
<tr>
<td>Judiciary</td>
</tr>
<tr>
<td>Public Interest/Legal Services</td>
</tr>
<tr>
<td>Private Practice-Law Firms</td>
</tr>
<tr>
<td>Private Practice-Sole</td>
</tr>
<tr>
<td>Other</td>
</tr>
</tbody>
</table>
IV. Perceptions/Attitudes about Law Practice, Role of Female Lawyers

In reviewing the responses to the questions related to perceptions and attitudes about the legal profession and the role of female lawyers, there are some notable consistencies between male and female responses and some glaring differences. This section reviews the key areas of similarities and dissimilarities.

A. Similarities

There do not appear to be any substantially significant differences between men and women in why they chose law as a profession or in their reasons for choosing their current employment. These consistencies dispel some myths and ask us to question more closely why women are more highly represented in certain types of law practice and areas (e.g. family law). For example, men and women equally rank service to others as an important factor in choosing law as a profession. This is contrary to the commonly held perception that women are more service oriented and that this greater desire to provide service to others accounts for more women in public interest and government jobs. Our finding may mean that these types of jobs afford other benefits to women which relate more to job environment than the nature of the work. It should be noted that, however highly men and women rank service to others, it is not reflected in the numbers engaged in public interest law, which are quite small (4%, 1%). As a general matter, there are few differences in areas of concentration, except that more women practice family law and more men practice in the areas of corporate and real estate law.

Most lawyers report being reasonably satisfied with their current employment (76.4%, 83%). A majority of both men and women are satisfied with the number of hours worked (58%, 58%), although more women than men reported being dissatisfied or very dissatisfied (15%, 10%). The average number of hours worked per week is 44 hours for women and 47 hours for men. Approximately 60% of both men and women work between 40-54 hours a week, with men being more highly represented in the 50-54 hour range and those ranges above 55 hours a week. Similarly, the percentages of men and women responding that they are satisfied, or neither satisfied nor dissatisfied, with the amount of time they have for themselves is about equal. But the number of women who report being very dissatisfied is significantly greater (11.6%, 5.4%).

B. Dissimilarities

Whereas both men and women appear to enter the legal profession with similar goals, there are marked and consistent patterns of differences in
attitudes and perceptions about the practice of law and the role of women in the legal profession.

1. Financial Rewards

Women lawyers make less than their male counterparts. Over half of the women (53.1%) make under $40,000, compared with 20.6% of the men. Almost 85% of the women make $59,999 or less, compared with 50% of the men. The relative youth of the women members of the bar naturally is one factor contributing to the differences in compensation levels between women and men. But, when we compare compensation levels of women and men, controlling for the year of graduation from law school, we find statistically significant differences. For graduates in the period 1985-1989, there is a difference in compensation levels in favor of men in all the ranges up to $50-60,000 of approximately 10 percentage points. For example, 31% of women 1985-89 graduates make between $20,000 and $30,000, while only 19% of male graduates earn in that range. The gap is narrower for 1980-84 graduates across the ranges, but widens again at the lower ranges for graduates before 1980. Fourteen percent of women graduates from 1970-74 earn in the $20-30,000 range, compared to only 3% of the male graduates. This suggests that older women graduates either chose lower paying jobs or were unable to get the higher paying positions.

These compensation numbers are gross in that they include both full and part-time workers and aggregate types of organization and years of experience. Thus, some of the disparity is no doubt correlated with differences in years in practice and types of practice. For example, government jobs pay less than private law firms. Seventy percent of lawyers who work for state or local governments or for public interest firms/legal services earn between $20,000-$40,000. Twenty-five percent of lawyers in law firms earn in that salary range and 51% earn $50,000 or over. The higher representation of women in these lower paying organizations would affect the overall salary levels.

While it is initially appealing to attribute gender differences in salaries to women's relative inexperience or the kinds of jobs women take, the data do not support this thesis. Even controlling for variables such as experience and type of organization, women earn significantly less than men. What we see in all of our tabulations is a fairly substantial gap in favor of men at the lower salary levels, narrowing in the $40-$60,000 range as women reach their salary peak and widening again thereafter. Even in organizations where women lawyers are highly represented, we find that men earn more than women. For instance, while 17% of women and 5% of men work in state and local government, 63% of those women make less than $40,000, compared with 10% of the men. And while 25% of the women government
attorneys earn between $40,000 and $60,000, 90% of their male colleagues earn that much. (These figures do not control for experience.)

Table Five shows in percentages the salary levels for men and women, controlling for years of experience.

**TABLE FIVE**

**SALARY LEVELS, CONTROLLING FOR EXPERIENCE**

<table>
<thead>
<tr>
<th>Years Experience</th>
<th>up to $40,000</th>
<th>$40-60,000</th>
<th>$60-80,000</th>
<th>over $80,000</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>F  M</td>
<td>F  M</td>
<td>F  M</td>
<td>F  M</td>
</tr>
<tr>
<td>less than 5</td>
<td>70% 46%</td>
<td>29% 43%</td>
<td>2% 9%</td>
<td>0% 3%</td>
</tr>
<tr>
<td>5-9</td>
<td>38 33</td>
<td>43 37</td>
<td>11 18</td>
<td>7 11</td>
</tr>
<tr>
<td>over 10</td>
<td>27 8</td>
<td>28 22</td>
<td>19 20</td>
<td>27 50</td>
</tr>
</tbody>
</table>

Tables Six and Seven look at salaries of persons who are employees and at salaries of those who are partners, in each case controlling for experience.

**TABLE SIX**

**NON-PARTNERS**

<table>
<thead>
<tr>
<th>Years Experience</th>
<th>up to $40,000</th>
<th>$40-60,000</th>
<th>$60-80,000</th>
<th>over $80,000</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>F  M</td>
<td>F  M</td>
<td>F  M</td>
<td>F  M</td>
</tr>
<tr>
<td>less than 5</td>
<td>74% 47%</td>
<td>25% 44%</td>
<td>0.6% 9%</td>
<td>0.3% 0%</td>
</tr>
<tr>
<td>5-9</td>
<td>52 40</td>
<td>38 47</td>
<td>7 12</td>
<td>2 1</td>
</tr>
<tr>
<td>over 10</td>
<td>45 17</td>
<td>33 32</td>
<td>14 18</td>
<td>9 34</td>
</tr>
</tbody>
</table>

**TABLE SEVEN**

**PARTNERS**

<table>
<thead>
<tr>
<th>Years Experience</th>
<th>up to $40,000</th>
<th>$40-60,000</th>
<th>$60-80,000</th>
<th>over $80,000</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>F  M</td>
<td>F  M</td>
<td>F  M</td>
<td>F  M</td>
</tr>
<tr>
<td>less than 5</td>
<td>44% 11%</td>
<td>44% 56%</td>
<td>11% 0%</td>
<td>0% 33%</td>
</tr>
<tr>
<td>5-9</td>
<td>28 11</td>
<td>30 30</td>
<td>19 33</td>
<td>23 26</td>
</tr>
<tr>
<td>over 10</td>
<td>15 5</td>
<td>15 14</td>
<td>20 19</td>
<td>49 63</td>
</tr>
</tbody>
</table>

Women's responses to the questions related to financial rewards underline the differences in compensation and also suggest that it is not all the result of demographic factors such as age, experience and type of practice. Asked

---

10. Numbers sometimes do not add up to 100% because of rounding.
11. Includes both associates and persons not employed in law firms. Thus, it would include persons employed in jobs with lower pay scales than law firms.
whether "you were satisfied with your financial rewards," fewer women responded that they were very satisfied (35%, 50%) and almost one-fourth of the women (24.2%) answered that they were either dissatisfied or very dissatisfied, as compared with 14.2% of the men. Thirty-five percent of the women responded that their pay and fringe benefits were worse than other lawyers similarly situated. Asked whether they were optimistic or pessimistic about improvement in their pay and fringe benefits over the next five years, a majority of men and women were optimistic, but more women were pessimistic. Nearly half of the women (48%) reported inadequate compensation has been an obstacle to their success as a lawyer, compared with 27.6% of the men; and 45% of women think inadequate compensation will continue to be an obstacle. In response to a question which asked for a comparison of compensation with similarly situated lawyers of the opposite sex in the same job setting, 30% of the women reported their compensation was lower and nearly 20% of the men reported their compensation was higher. About 40% of each group reported that their compensation was the same. Consistent with the response to this question, 31.7% of women report that they have been the victim of discrimination in pay. And, more women than men report that they changed jobs for financial reasons (13.4%, 9%).

We looked to see whether age was a factor in the female responses to these questions. Was the greater dissatisfaction with pay and fringe benefits among women in part a reflection of earlier discrimination against women lawyers in terms of pay and types of job opportunities? We found no statistically significant differences among female age groups in their responses. Fewer women in the over 60 age group report that insufficient compensation has been an obstacle to success. More startling is the percentage of those under 30 years of age who report that insufficient compensation has been an obstacle: 42%, compared with 25% of men in the comparable age group.

2. Opportunities for Advancement

Does a glass ceiling exist for women lawyers? The answer is probably yes. Women certainly believe that their opportunities to advance are less and that they are given less challenging responsibilities than their male counterparts.

Nearly a quarter of the women are dissatisfied with their opportunities to advance. More than 30% of the women believe their opportunities for advancement are worse than for other lawyers similarly situated, as compared with 16% of the men. Ten times as many women as men (207 women; 21 men) said their opportunities to advance were less than those of lawyers of the opposite sex in the same job setting. Nearly 40% report inadequate opportunity for advancement has been an obstacle for success and more than 40% believe it will continue to be an obstacle. Twenty-one percent of
women report discrimination in promotion; and in response to the question “Do you agree or disagree with the statement ‘female lawyers will never achieve equal status with men,’” over 30% of women agreed. Perhaps because of the perceptions of lack of opportunities to advance, significantly more women responded that potential for advancement was of little or no importance in their decision to accept their current employment (31.5%, 20%).

We also looked at the responses to these questions by age groups. Again, we did not find statistically significant differences among age groups in the responses to questions related to opportunities for advancement, although more older women (ages 50-59) do report that inadequate opportunities have been an obstacle to success as a lawyer. As with our findings with respect to pay and fringe benefits, what is surprising are the percentages of women in the younger age groups who find that inadequate opportunity for advancement has been an obstacle to success as a lawyer. Thirty percent of women under 30 years of age and 37% of women between the ages of 30 and 34 answered “yes” to that question, compared with 8% and 16% of the men in those age groups.

Responses to questions about job security also suggest that women are more uncertain about advancement than men. More women than men (14.2%, 9.3%) see their job security as worse than other lawyers similarly situated. When we break out the response to this question by age we see that four times the number of women than men in the age group 35-39 view their job security as worse. There are also significant differences between men and women in the over 60 age group. It is likely that partnership concerns and child-rearing conflicts are affecting the 35-39 age group, while retirement concerns dominate the older age group. It follows that more women than men are pessimistic about significantly improving their job security over the next five years (10%, 6%). Responses to this question do not, moreover, show significant differentials either among the female age groups or between male and female age groups.

3. Firm Dynamics

a. Feedback and Input Mechanisms

Women are more dissatisfied than men with the level of feedback from management and the level of input they have into management decisions. A fourth of the women are dissatisfied with feedback from their firms or organizations, compared with 13.1% of men. As to the level of input, significantly fewer women than men were satisfied and 30% were dissatisfied. This disparity is consistent with the fact that more men are part of management. When we asked whether “inadequate feedback has been an obstacle to your success as a lawyer,” almost three times as many women
as men answered "yes" (348, 114). Similarly, three times as many women think inadequate feedback will continue to be a problem. Thirteen times as many women feel they have less participation in management than similarly situated male lawyers in the same job setting.

A fairly high percentage of women, however, report having mentors who further their careers. In fact, a greater percentage of women than men report having a mentor (47%, 32%). The lower number for men may simply reflect differences in ages and stages in legal careers between the female and male lawyers.

b. Respect and Prestige

Across the board, women indicated that they were less satisfied than men with the respect shown them by their superiors and by their colleagues and peers. Eleven percent of women were dissatisfied or very dissatisfied with respect shown them by superiors, compared with 6% of the men. In terms of respect shown by colleagues and peers, 8% of women are dissatisfied compared with 2% of the men. Four times as many women said their situation in terms of respect and prestige was worse than other similarly situated lawyers. More than twice as many were pessimistic about improvement (10%, 5%). A quarter of the women felt they received less encouragement for their performance than male lawyers in the same job setting, whereas only 6% of men felt that way vis-à-vis female lawyers.

Many women cited the lack of respect they received from their colleagues, peers and the bar in general in written commentary on their survey forms. Women feel they must repeatedly prove themselves capable in the face of a presumption that they are not:

"[L]aw school does not, perhaps cannot, prepare you for the lack of professional respect that exists on the part of attorneys and judges."

"[Men] don't think of [women] in leadership roles. The normal presumption of competence does not apply and the female attorney has to prove herself over and over again."

"As a female lawyer, I have had to be better, work longer hours at less pay to establish my reputation which is now fairly solid. But I had to work harder to get there."

Another area related to firm organization where there appears to be noticeable differences in satisfaction levels is relations with support staff. Again, women appear to be less satisfied with the respect and help they receive from support staff. Twice as many women report that their situation with respect to help from support staff is worse than for other similarly situated lawyers. Problems with support staff were also noted by a number of women in the “additional comment” section.

c. Professional Relationships

In comparing male and female lawyers' performance, men rated women more harshly than women rated themselves. For example, when asked "how
female lawyers in your firm/organization performed in the area of professional commitment, compared with similarly situated male lawyers," approximately 70% of women and 75% of men answered that [the] level of commitment was the same. But a quarter of the women ranked female lawyers in their organization as being better than male lawyers, whereas only 6.2% of the men did. Conversely, 19% of the men thought women were not as committed, compared with 6% of the women.

The responses to a question about the overall performance of female lawyers within the firm or organization show a similar pattern. More women rate themselves as excellent and more men rate women as fair. With respect to number of hours worked, men and women have more pronounced differences. A quarter of the men rate female performance as fair (21%) or poor (5%), compared with a total of 7% of the women who rank female performance as fair or poor. As discussed in part III above, there is little difference between women and men in the average number of hours worked.

Both men and women see women as not being as successful in attracting clients or having contacts with clients. Sizable groups of women and men think male lawyers are better at making contacts with clients (32%, 39%) and attracting clients (45%, 38%). In terms of women's ability to attract clients and form professional relationships within the bar, most women (92%) believe there is an "old boy network" and 94% of women believe this network helps male lawyers more than female lawyers. Fifty-five percent of men believe there is an "old boy network." Of those men who answered "yes," 70% of men believe the "old boy network" helps male lawyers more than female lawyers.

Connected to the issue of professional relationships is the issue of stereotyping female and male behavior. Written comments to the questionnaires indicate that professional relationships between men and women may be affected by male stereotyping of their female colleagues' behavior. For instance, some male lawyers complained that women lawyers are "too aggressive" and "bitchy." They also complain that women lawyers unfairly use their feminine wiles. Such stereotyping is undoubtedly destructive of professional relationships and clouds men lawyers' perceptions of women lawyers' competence:

"[I]f women want to be treated as lawyers, they need to be better lawyers, think and act as lawyers."

"As a final comment I would have to say that as a male lawyer, I have found that many female lawyers act far too aggressive in their approach to cases and other lawyers. I feel as though their attitudes make it difficult to integrate into what has been a predominantly male profession. I have heard the word 'Bitch' used far too often to describe a female attorney"
“On average I see female lawyers holding back evidence, making ex-parter contacts with judges and generally doing some sneaky things to get an advantage in a case. . . . I personally trust one or two out of approximately 8 female lawyers I regularly encounter.”

“Women let their sex be a liability. Prime example is the woman attorney that thinks she has to be overly aggressive because that is the stereotype of a good male attorney.”

Women are well aware of, and resent, the double bind they find themselves in:

“[A]n aggressive woman lawyer is likely to be labeled a ‘bitch’ or ‘on the rag’ or some equally endearing term!”

“Too many men equate competence in the courtroom with a booming voice and abrasive manner. A reserved woman is perceived as demure, timid, diffident.”

4. Discrimination

“I do see a great deal of discrimination against women in our firm, and, in fact, we actually have some problems with partners physically approaching female associates. . . . Very tough to have a family and be a female lawyer in our firm. . . . I could go on ad nauseam.”

—response of young male associate

a. Survey Responses

Most men agree that female lawyers are as capable as male lawyers, but only 43.4% of men strongly agree as compared with 83.2% of the women. This difference in strength of commitment to the content of the statement underscores the significant and consistent differences between men and women in their experiences with discrimination and their perceptions of discrimination in the legal environment. This section will first outline responses to the questions which dealt specifically with acts of discrimination. It will then review responses to other questions which asked about perceptions of sexual discrimination in the legal profession.

Question 12 listed specific forms of sexual discrimination and asked whether the respondent had ever been the victim of such discrimination. Reprinted below are the forms of sexual discrimination set forth in question 12 and the percentages of women responding that they have been victims of such forms of sexual discrimination. Male “yes” responses were negligible.
TABLE EIGHT  
ACTS OF DISCRIMINATION

<table>
<thead>
<tr>
<th>Description</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical Sexual Harassment</td>
<td>11.4%</td>
</tr>
<tr>
<td>Verbal Sexual Harassment</td>
<td>40.0%</td>
</tr>
<tr>
<td>Discrimination in Hiring</td>
<td>25.1%</td>
</tr>
<tr>
<td>Discrimination in Promotion</td>
<td>21.0%</td>
</tr>
<tr>
<td>Discrimination in Work Assignment</td>
<td>28.5%</td>
</tr>
<tr>
<td>Discrimination in Pay</td>
<td>28.5%</td>
</tr>
<tr>
<td>Verbal Abuse</td>
<td>28.1%</td>
</tr>
<tr>
<td>Adverse Rulings from Court or Agency</td>
<td>14.1%</td>
</tr>
<tr>
<td>Other</td>
<td>30.4%</td>
</tr>
</tbody>
</table>

A quarter or more of women respondents to the survey report being victims with respect to most of the described forms of sexual discrimination. Question 13 asked “who was responsible for such acts?” Employers/supervisors were most often cited as responsible for acts of discrimination (60%). Fifty-three percent of women said opposing lawyers were responsible for acts of discrimination. Judges, clients, and co-workers were each cited as responsible by 30% of the women.

Victims of sexual harassment, in particular physical sexual harassment, often have their complaints ignored or, worse, held against them. They are labelled as troublemakers, and they fear retaliation. In one poignant letter to the Commission, a woman wrote:

“Soon after I joined the firm, I was pinned in a corner and fondled by a senior male associate—a very respected associate. It was totally unprompted and unwanted. I made it clear to the associate that I did not want that kind of activity ever again. He just laughed. I immediately reported this to two people designated to receive such information (both male[ ]). The one laughed and said it was probably a joke; he could not be convinced that I was seriously upset and that the male associate was seriously wrong. The second said he would ‘look into it’ but did nothing.”

After describing other incidents involving a partner, the writer continued,

“finally, even though I feared reprisals from the partner and the firm, I told the official ‘contact person’ what had been happening and told two of the highest ranking partners in the firm (all male). I got told two things: that I was a problem to the firm because I couldn’t get along with people and that no matter what anyone did to me I was to keep my mouth shut.”

Another woman wrote,

“‘There is little or no recourse for women who experience sex discrimination within the bar.”

In response to questions as to whether harassment by certain groups had been an obstacle to success as a lawyer, women responded “yes” and named
the following groups as the source of harassment in the following percentages:

- partners — 12%
- fellow lawyers — 19%
- opposing counsel — 28%
- judges — 17%
- clients — 12%

Male "yes" responses ranged from 3-5%. It appears from the answers to these questions and from the written commentary, as well, that discriminatory behavior by opposing counsel is prevalent.

Question 15 elicited some interesting responses in terms of differences in male and female daily experiences with discriminatory behavior. The differences are substantial and indicate that there are significant differences in perceptions of what is sexually offensive conduct. Sixty-four percent of women reported that in the past year they have often or sometimes observed or experienced use of inappropriate names, compared with 22.6% of the men. The disparity in response is even greater among those who reported that such behavior occurred "often." Nearly 20% of the women report that they observed or experienced the use of inappropriate names often, while only 2.4% of men so responded. Half of the men have never seen such behavior, as compared with 13.5% of the women. Use of inappropriate names and its effect were also noted often in the written comments of women respondents. As one respondent described the problem:

"Male attorneys would be referred to as Mr. ___ and I would be called by my first name. This isn't exactly the kind of behavior to file a lawsuit over, so you're stuck in a situation where your creditability [sic] has very subtly been eroded over a period of time."

With respect to verbal advances, 24% of women report having seen or experienced such behavior often or sometimes in the past year, while only 5% of the men observed it sometimes. Ninety percent of men have never seen inappropriate touching of a female lawyer, compared with 61.2% of women who have never seen it. Thirteen percent of women report inappropriate touching occurs often (2%) or sometimes (11%) and 26% report it occurs rarely.

With respect to condescending treatment of female lawyers by male lawyers, 19% of women report it occurs often, compared with only 2% of the men. The numbers with respect to condescending treatment are, by and large, repeated in the responses to questions asking about the respect women receive. A significant percentage of women report that female lawyers are often treated with less respect than men, while few men report having seen such behavior. Similarly, a quarter of the women hear sexist jokes often, compared with only 4% of the men. Thirty percent of the men report never
having heard a sexist joke in the past year, as compared with 14.6% of women.

In response to question 14 which asked, "In the past 5 years, how often have you observed that female lawyers' statements in court appear to be given less weight than those of male lawyers?", we again find significant differences between male and female responses. Women report that opposing counsel more often give less weight to female lawyers' statements than other actors. A majority of women (58.8%) said they have sometimes or often observed opposing counsel give less weight to female lawyers' statements, whereas with respect to judge and court employees, the percentages were 39.9% and 31.9%, respectively.

It is quite likely that there is a sizable population of male lawyers in Indiana who have few or no dealings with female lawyers in their practice. This fact may explain some of the magnitude of the differences of experiences described above.

Finally, question 8 of the survey posed a series of statements about female lawyers and asked respondents if they agreed or disagreed with such statements. Again, we find significant differences in perceptions of discrimination, although sizeable groups of both women and men agree that female lawyers encounter discrimination. Nearly three-fourths (72.5%) of the women and a near majority (43.6%) of men agree that female lawyers encounter discrimination. One quarter of the men agree that female lawyers receive favorable treatment because of their sex, as opposed to 11% of the women. Thirty percent of men and 20% of women think women make too much of an issue of sex discrimination; 20% of women strongly disagree that this is so. Asked whether [they] agree or disagree with the statement "the situation for female lawyers has improved over the past five years," 72% of women and 84% of men agree there has been improvement, but more men agree strongly and more women disagree. There is little sentiment for special treatment for women in either group.

b. Anecdotal Evidence of Discrimination

Respondents' written comments and other communications to the Commission give life to the kinds of discrimination women lawyers encounter in the profession. There were a number of complaints against local bar associations. One local bar association invited its members to attend a dinner in which a feature event was "to get drunk and come on to babes." In response to a letter of complaint from a female member of the bar, the association printed the letter on the placemats used at the dinner. Another association sponsors an annual "all-male" golf outing and party. One woman writes:

"My desire to actively participate in the activities of the bar association has been severely 'chilled' by the racist and sexist activities of the local bar association. The behavior is so blatant that [it] is impossible to
believe that persons who behave or condone the activities of certain members of the bar are capable or redemptive to reform. On a state level, it is difficult for me to participate because I do not know how memberships on committees are determined."

Another person reported that a lounge in the county courthouse is de facto closed to female lawyers. Women complain generally of being excluded from social events, asked to do menial tasks, and being given less interesting work assignments. Acts like these tell women in no uncertain terms that they are not wanted; that they cannot be part of the "fraternity," and if they challenge the "fraternity," they will be punished.

5. Women's Issues

"A woman should not be penalized for being female and reproducing. One can have a family and still be a lawyer—if those are mutually exclusive, it's a sad commentary for our profession."

"I earned my law degree with my intelligence and hard work. I deserve it. It won't be wasted whether I'm reciting precedent to a judge or Dr. Seuss to a four year old. It's a shame that our colleagues require us to prove ourselves again and again by asking us to be just like them. I won't apologize for being more than just a lawyer."

Responses to questions concerning family demands, part-time work, child rearing, etc. confirm that responsibility for the family and accommodations for career and family remain women's issues. This conclusion was underscored repeatedly in the written comments of women respondents.

For 44% of the women, family demands have been an obstacle to their success, compared with 29% of men. Consistent with the age profile of the women lawyers, nearly 60% of women think family demands will be an obstacle in the future. In the written comments, the need to accommodate both family and career demands was listed over and over again by women respondents as a major problem in pursuing a legal career, whereas it was raised as an issue by only one male respondent.

Many women wrote that they had stopped practicing due to family demands and the unavailability of jobs which accommodated those family demands:

"I am physically unable to continue to work and meet the demands of raising a child. Therefore I have resigned. I do not expect to return to the practice of law until my childraising days are over. In short, family and intense litigation practice do not mix well."

[Mother finishing maternity leave] "I would very much like to work part-time but there seem to be limited opportunities for that in this profession."

[Woman with young children starting out in practice seeking part-time employment in a county with few women lawyers] "I felt they distrusted me because I was a woman with young children. I finally opened my
own practice for one year. I did not want to work full time with a firm because I had young children. I received fairly regular court referrals for nominal compensation. I had no luck obtaining clients or referrals from the Bar. I stopped practicing after one year because it was a financial loss. I plan to resume practice when my youngest child is 3.”

In addition to the fact that more women work part-time than men, the data show that there are significant differences in who works part-time in terms of age groups. Men who work part-time are concentrated in the older age groups (36% are 50 or older). No males in the age group 30-34 work part-time. As to women who work part-time, 16% are in the 30-34 age group and 22% are in the 35-39 age group. These years correspond with the years of childbearing and child-rearing. Thirty-six percent of women report that lack of good part-time opportunities has been an obstacle to success, compared with 10% of the men; and a majority of women, compared with 10% of men, think it will be an obstacle in the future. Similarly, lack of day care facilities is seen as being a potential problem by 46.5% of the women and only 9% of the men.

Written commentary raised repeatedly the problems of lack of part-time opportunities, the failure of law firms to be flexible, and failure of law firms to make accommodations for pregnancies and families. Here are but a few of the comments received:

“I also feel that female lawyers do not have the same opportunities for part-time work that exist in other professions and I do not believe GOOD reasons [emphasis in the original] exist for the lack of such opportunities. Too many women are forced to choose between a good (interesting, challenging and financially rewarding) legal job at the expense of their families (particularly children) or to choose less rewarding work in order to devote more time the [sic] their families.”

“My career goals have not been very ambitious. My primary concern at this point is my children, so I have sacrificed money and a challenging career to obtain flexibility in hours.”

“Part-time opportunities are few and far between.”

“Child care and flexible schedule [are] of paramount importance but the ‘mommy track’ syndrome is a potential trap for those who want families and practice.”

“My employer has accommodated my desire for a ‘reduced’ work schedule. I took a 10% pay cut in exchange for one day off every other week. The downside - it’s definitely a ‘career-limiter move.’ I’m now perceived by many as the ‘part-time’ attorney, even though my productivity exceeds most in our department, even with the reduced hours.”

“As my wife is also a lawyer, the biggest obstacles for many women lawyers who want to work while still having children [are]

1) lack of part-time employment
2) lack of information about available part-time employment”

“The biggest problem facing female attorneys is how to balance career
and family. Currently, we are expected to be superwomen, who perform well at work and then go home, clean, cook and take care of the kids. It's almost impossible to take time to do things for your family. There must be daycare at the work place. It's not fair that women are forced to choose between career or family."

Many more women lawyers than men are single (20%, 6%), and fewer women than men have children (53%, 81%). More women are divorced (8.3%, 4%). Fifteen percent of women report deciding not to have children at all because of their legal careers. Women lawyers also have fewer children than men lawyers. Nearly 30% of women report having delayed their career because of children, compared to 3.2% of men. Thirty-six percent of women delayed having children due to their career, compared with 23.7% of men. More women than men report changing jobs because of their partner's employment or for family reasons.

Men and women agree that women shoulder more of the family responsibilities. Fifty-seven percent of the men and 97% of the women have partners who work either part-time or full-time. For those women who have partners who work, nearly 30% of the women report they have 75-100% of the family responsibilities, compared with only 1.6% of the men with 75-100% responsibility. Another 30% report they have 60-74% of the responsibilities and 30% of the women report they have 50-59% of the responsibilities. Thirty-seven percent of the men with working partners said they share in 50-59% of the responsibilities. A majority of men report they do less than 50%.

Sixty-seven percent of the men who answered that their partners worked have partners who work full-time. Nevertheless, 95% of the men whose partners worked either full or part-time reported that their partners had 50% or more of the responsibilities. Fifty-seven percent of men admitted that their working partners had 60% or more of the household responsibilities. Sixty percent of the women have partners who share less than 50% of the responsibilities.

How accommodating are firms and other organizations to family needs? A majority of men and women work where part-time employment is not available. The number of people working part-time varies inversely with the size of the organization, so that while part-time lawyers are more heavily concentrated in law firms than other organizations, they are generally in the smaller firms. Flexible work schedules, however, seem to be available in a majority of work places. Day care is unavailable. Written maternity leave is available in less than a majority of organizations. Few firms offer formal paternity leaves. Informal maternity leave is available in 42% of organizations. If there is no overlap in the numbers between the formal and informal leave policies, 81% of organizations provide for some type of maternity leave. The percentage of lawyers responding that their organizations provide either formal or informal paternity leave is 21%.
How does Indiana fare in comparison with other states? The Indiana Bar Report, like the ABA Report, focuses on the role and status of women lawyers. The state bars in California, Minnesota, New Hampshire and Wisconsin have issued similar reports, as have a number of city bar groups. Many more states have created task forces charged to investigate generally the issue of gender bias in the courts. These task forces examine issues of gender bias on three fronts: bias in substantive law areas, such as domestic violence and family law; treatment of women in the courts, not only as lawyers but also as litigants and witnesses; and treatment of women personnel in court administration. The work of the gender-bias task forces also provides information as to the status of women lawyers but is limited to the role and status of women lawyers in the courtroom setting.

What is most striking about the Indiana survey results when reviewed along with those from other states is the consistency in the data. Whether we look at a large state such as California, where women lawyers number approximately 13,000, or a small state, such as New Hampshire, where the entire bar numbers 2,300, or at Indiana’s neighboring state, Illinois, the profile of the woman lawyer is much the same. Compared to her male counterpart, she is younger, with fewer years in practice. She is more likely to work in government than her male counterpart, and she makes less money wherever she works. She is more likely to be single or divorced and to have fewer or no children. She finds the balance of career and family difficult to attain and maintain. And finally, gender bias, both overt and subtle, is likely to be a part of her experience as a professional.

16. Bar associations of Boston, Cleveland, Indianapolis and New York City, among others, have surveyed either all their members or their women members in connection with the role of gender in the practice of law.
18. See infra notes 65-71 (relating to percentages of women complaining of differential treatment, such as use of inappropriate names, comments on appearance, sexist jokes and patronizing behavior). The numbers barely change from one state to another. The anecdotal evidence in the ABA Report and the state gender-bias reports are of the same refrain.
The data collected are rich with information about many aspects concerning the status of women in the profession. I focus on three areas: the work setting, sexual harassment/differential treatment of women and family status issues. In each of these areas, there are significant differences in the experiences of female and male lawyers.

A. Where Women Work

All studies show fewer women engaged in private practice than men. In Indiana, the figures for women and men are 53% and 74%, respectively.21 The New Hampshire study found 68% of women in private practice compared with 80% of the men.22 Similarly, the Wisconsin survey found 54% of women in private practice compared with 68% of men.23 In the Illinois gender-bias study of litigators, 66% of the women and 87% of the men were in private firms.24 A study of University of Michigan Law School graduates found only 44% of women graduates in private practice compared with 70% of the men.25 Women are also more highly represented in government, particularly at the state and local level. The national figures for women and men lawyers in state and local government are 13% and 7%, respectively.26 In Indiana, 17% of women lawyers are in state and local government, while over 20% of Indiana women lawyers started their legal careers in state and local government.27

25. David Chambers, Accommodation and Satisfaction: Women and Men Lawyers and the Balance of Work and Family, 14 LAW & SOC. INQUIRY 251, 261 (1989). Chambers' article is based on data from questionnaires sent to University of Michigan graduates of the classes of 1976-1979 at the point when they had been out of law school five years. All respondents were surveyed again in 1986. Id. at 260.
27. Indiana Bar Report, supra note 5, at 13-14. In New Hampshire, the figures for women and men in government (at all levels) are 11% and 7%, respectively. Twenty-two percent of women in Wisconsin are practicing in government (at all levels) compared to 11% of the men. Sixteen percent of women in the California bar work for government. In the Illinois study, 18% of the women litigators were in government compared to 5% of the men. The report of the Florida Supreme Court Gender Bias Study Commission cites survey results which found women twice as likely to be in government positions. New Hampshire Bar Report, supra note 14, at 232; Wisconsin Bar Report, supra note 15, at 12; California Bar Report, supra note 12, at 6; Illinois Report, supra note 24, at A-55; Report of the Florida Supreme Court Gender Bias Study Commission 196 (1990) [hereinafter Florida Report]. With the exception of the University of Michigan graduates, most surveyed women government lawyers are working at the state or local levels, rather than at the federal level. The number of lawyers in Indiana working for the federal government is too small upon which to base any general statements, and, therefore, those statistics are not included in the analysis of work settings.
Why are women significantly more attracted to government practice than men and less attracted to private practice? The Michigan Law School survey specifically asked respondents what they thought were the reasons for the differences in work settings. The most common explanations offered by both women and men were women's desire for settings "where they could achieve an acceptable balance between work and their family or private lives," and for settings less hostile to their presence than private firms.\(^2\)

As to the "lifestyle" explanation, other data from the Michigan survey, such as the significant presence of women in large firms where the stress from time demands is most severe, suggested that family considerations were probably not the only factors contributing to women's decisions about work settings.\(^2\)

Because governments generally pay less than private firms, we can assume that financial reward is not the driving force. It is often said, however, that governments make up for lower monetary pay with "psychic income." Women may be more public interest oriented, and thus, more satisfied with psychic income. This would be consistent with the feminist literature which defines women as more caring and empathic, more likely to seek a more human world for themselves and others.\(^3\)

The data available on women's

\(^2\) Chambers, supra note 25, at 269. In the Michigan survey, 37% of women and 21% of men practiced in a setting other than private practice. Id. at 262.

\(^3\) Id. at 270. The Michigan survey found women with children as likely to be in private practice as women without children. Moreover, a higher proportion of women than men worked in the large firms. Id.

30. There now exists a substantial body of theoretical and empirical research in psychology and sociology which suggests that the female conception of the self develops with relational and affiliational values. See, e.g., Carol Gilligan, In a Different Voice: Psychological Theory and Women's Development 32 (1982) (In her widely influential book, Gilligan discusses the role of gender in the development of moral reasoning, and postulates that male problem solving employs a hierarchal rule-based model, while female problem solving seeks to resolve the "network of connection, a web of relationships that is sustained by a process of communication."); see also Nancy Chodorow, The Reproduction of Mothering: Psychoanalysis and the Sociology of Gender (1978); Dorothy Dinnerstein, The Mermaid and the Minotaur: Sexual Arrangements and Human Malaise (1976) (exploring psychological consequences of mother-centered child rearing on human relationships); Nell Noddings, Caring: A Feminist Approach to Ethics and Moral Education (1983); Caroline Whitbeck, A Different Reality: Feminist Ontology, in Beyond Domination: New Perspectives on Women and Philosophy (C. Gould ed. 1984) (feminist ontology is premised on self-others relations rather than self-other opposition and an ethic that focuses on responsibilities rather than rights); cf. Jean Grimsley, Philosophy and Feminist Thinking (1986) (arguing that the dichotomy between abstract thought commonly associated with mature male thought and concrete thought associated with female thought is a false opposition and should be discarded); Nancy Henley, Psychology and Gender, 11 Signs 101 (1985) (reviewing efforts within the field of psychology to understand gender issues including moral development in order to find patterns of development within feminine psychology and its relation to mainstream psychology); Ann Scales, The Emergence of Feminist Jurisprudence: An Essay, 95 Yale L.J. 1373 (1986) (using recent radical feminist legal scholarship as examples from which suggestion of feminist methodology can be deduced). Recognition and discussion of the "different voice" in law, lawyering and legal education can be found in: Marilyn French, Beyond Power: On Women, Men, and Morals (1985); Feminist Discourse, Moral Values, and the Law—A Conversation, 34 Buffalo L.
interests and motivations provide inconclusive evidence on this point. Earlier studies of women lawyers supported the view that women are more public service oriented. The 1986 survey of Stanford University Law School graduates and students found, however, that "women and men attend law school for largely the same reasons." Specifically, more female than male graduates expressed a desire to serve society, but no differences were observed among current female and male students.

Similarly, the Indiana Bar Report's survey, which asked questions about what factors were important to the respondents in choosing the legal profession, did not find significant differences between women and men in why they chose the legal profession. Nor do the surveys reveal many significant differences in the factors that are important to women and men in choosing their current employment. Those differences that emerge seem to relate to lifestyle concerns and not to fundamental differences in goals.

Women in both the Indiana and New Hampshire surveys were less concerned
than men about potential for advancement with respect to current employment. Women in New Hampshire listed flexibility of hours as important more often than did men, while geographic concerns were more important to women in Indiana. The Stanford survey, which asked about the importance of various factors regarding job satisfaction, including the opportunity to be of service to society, found only one gender difference: the adversarial nature of the job was less important to women than men.

This difference lends support to the theory that women will bring another approach to lawyering, one which emphasizes conciliation and mediation of disputes. However accurate this hypothesis may be, it is not likely that the greater presence of women in government can be attributed to an inherent mismatch of the feminine personality (that is, non-adversarial) and the litigation-based nature of most private firm practice. Most lawyers working at the state or local government level are engaged in litigation, both civil and criminal. They work in the state attorney general's office, the local prosecutor's office or the city legal department.

Another possible explanation is that government offers bias-free employment, that is, women are assured of equality of treatment. While we do not know whether women believe this to be the case when they enter governmental practice, it does not in fact appear to be the case in terms of compensation and advancement opportunities. As noted in the Indiana Bar Report, the pattern of gender-based salary differentials found in law firms

40. Traditionally, there have been few women litigators. James White, Women in the Law, 65 Mich. L. Rev. 1051, 1062 (1967). Men perceived women as not suited to litigation and barred their entry, believing women could not handle the rough and tumble of trial work. See, for example, Gail Diane Cox, Quick, Name a Female Litigator, Nat'l L.J., Feb. 29, 1988, at 1, col. 2, for a discussion of why there are few women "star" litigators. See also Florida Report, supra note 27, at 218 (noting that men and women across the state repeatedly testified that "a lot of women are steered out of areas that involve a lot of litigation").

Nevertheless, the trend is probably for more women to engage in litigation practice. A Maryland survey found that for two-thirds of the female respondents, litigation constituted over 20% of their practice. Maryland Special Joint Committee, Gender Bias in the Courts 119 (May 1989) [hereinafter Maryland Report]. Twelve percent of women in New Hampshire listed criminal law as a specialty. Twenty-five percent listed non-criminal litigation as a specialty. New Hampshire Bar Report, supra note 14, at 230. In a Boston survey, 34% of women listed general civil litigation as their specialty of practice; 8% were doing criminal litigation. Preliminary Report of the Boston Bar Association Study of the Role of Gender in the Practice of Law 12 (1988) [hereinafter Boston Survey].
is also present in government. Similarly, the New Hampshire Report found that "amongst the entire Bar (both the public and private sectors), very large differences exist between full-time female and male attorneys in the amount of money they earn." The California Bar Report noted that more women in government were dissatisfied with their opportunities to advance than women in other types of practice.

Analysis of the Indiana data correlated by work setting also repudiates the notion of government as an oasis from the discriminatory practices of law firms. For example, 30% of women in state and local government answered that sexual discrimination in work assignments will be an obstacle to their success in the future compared with 13% of women in private law firms. Similarly, more women in state and local government than women in law firms anticipate sexual discrimination in the future with respect to the level of responsibility. Consistent with these responses, more women in state and local government (21%) said sexual discrimination in promotion had been an obstacle to success than did women in law firms (15%). And, 33% of women in state and local government believe sexual discrimination in promotion will be an obstacle compared with 18% of women in law firms.

Analysis of the Indiana survey data also suggests a need for caution in comparing responses from women in different work settings. For example, 40% of women sole practitioners indicated that sexual discrimination in promotion had been an obstacle to success. Given the nature of sole practice, this response must mean that many women encountered discrimination in other previous work settings, presumably including law firms. Thus, it also may be that answers by women in government as to past obstacles relate to discrimination encountered in other work settings, although a third of the women in state and local government still anticipate discrimination in promotion in the future.

There are some other plausible explanations which are refinements of the overarching "lifestyle explanation" suggested by Michigan survey

42. New Hampshire Bar Report, supra note 14, at 240. Similarly, the Florida Report notes that male assistant state attorneys earned around $3,600 more than women, and assistant public defenders who were male earned about $3,000 more than women. Florida Report, supra note 27, at 197.
43. California Bar Report, supra note 12, at 32.
45. In nearly all the responses to questions comparing the respondent's situation to other lawyers in similar situations, to questions related to the improvement of respondent's situation in the future and to questions related to career obstacles, women sole practitioners saw themselves as worse off, more pessimistic and as encountering more barriers. Unpublished survey data compiled for the Indiana Bar Report (data disk on file with the Indiana Law Journal).
respondents. First, government practice offers more flexibility and greater stability in hours. Second, government practice involves little or no outside client contact or rainmaking activity. Third, there is probably a reinforcing effect from the greater presence of women in government.46

1. Flexibility/Stability

"Women work less than men." This statement is often given as the major reason for why women have not been as successful in private practice as men. Survey data indicate that this is an overstatement. Note the Indiana Bar Report's figures on average hours for men and women, a state where large firms do not predominate; average hours are not very different.47 But, more men than women will be found working very long hours.48 This pattern is also found in the New Hampshire survey and the Michigan survey of graduates.49

In Indiana, both women and men lawyers for state and local government work fewer hours than do those in private practice.50 Fifty percent of women in private law firms work fifty hours or more per week, compared with 27% of women in state and local government.51 Consistent with these figures, a third of the women in state and local government indicated that excessive time demands had been an obstacle to their success, while nearly half of women in law firms answered "yes" to this question.52 The percentage of women working under thirty-five hours per week is about equal for women in government and private practice. There is a significant difference in the thirty-five to thirty-nine hour range: only 4% of women

46. I am grateful to the Honorable Sarah Evans Barker who suggested another possible explanation: government provides women the opportunity to achieve power not as easily obtained in the private sector. While responsibility and power are generally more accessible in government for both men and women, the uncertainty for women of attaining positions of power in law firms may cause more of them to turn to government.
47. Indiana Bar Report, supra note 5, at 16. Nevertheless, 21% of men rated female lawyers' performance with respect to the number of hours worked as only "fair" compared with 6% of the women who gave that rating. Id. at 27.
48. Id. at 16.
49. Average full-time hours per week for women in New Hampshire were 47.8, while the average for men was 50.8. Sixty-six percent of the men and 48% of the women worked more than fifty hours per week. New Hampshire Bar Report, supra note 14, at 234-35. In the University of Michigan survey, women without children and men averaged fifty-two hours per week. Women with children averaged forty-nine hours. Chambers, supra note 25, at 269 (citing data for the classes of 1980 and 1981 as "the most complete and reliable").
50. The number of men in the sample who were working in state and local government is fairly small. With that caveat, nearly 60% of the men work less than fifty hours per week. Unpublished survey data compiled for the Indiana Bar Report (data disk on file with the Indiana Law Journal).
51. Id.
52. Id.
in private law firms work in that range compared with 17% of women in state and local government.\textsuperscript{53}

It may also be that the certainty of the hours is as important as the number of hours worked. Although the Indiana survey did not specifically examine the importance of certainty and control over one's schedule, perhaps an attraction of government is that one can more readily depend on having "regular" workday hours. Governments tend to operate on tight budgets. Overtime compensation for support staff and expense-account dinners for lawyers are the exception, not the rule. The nature of the client-lawyer relationship in government also generally affords the lawyer more control over the client and hence more control over the timing of matters. All of these factors may operate to enable government lawyers to integrate their personal lives with their careers more easily. For example, child care concerns would be less stressful if a parent knows that last-minute scramblings to cover for late nights at the office will be infrequent events. It is not simply the amount of time involved but the stability of the time that matters.

There is some data to support this hypothesis. As the \textit{Indiana Bar Report} reveals, a majority of women and men were satisfied with the hours they work.\textsuperscript{54} Yet, more women were dissatisfied with the amount of time they have for themselves.\textsuperscript{55} Women may place more importance on their lives outside of work than do men, which would make jobs offering more control over hours at work attractive.\textsuperscript{56} As long as law firms insist that the economics of the market require the kinds of time demands currently asked of lawyers in private firms, and as long as such economics remain largely unexplored, employment in government will remain more attractive to women despite lower pay and perhaps fewer opportunities to advance.

2. Client Contact and Rainmaking

Survey data and anecdotal evidence indicate that women are less successful at attracting clients. Moreover, both women and men seem to agree on this

\textsuperscript{53} Id.

\textsuperscript{54} \textit{Indiana Bar Report}, supra note 5, at 16.

\textsuperscript{55} Thirty-four percent of women were dissatisfied with the amount of time they had for themselves compared to 25% of the men. In each case, the percentage of men and women dissatisfied with the time they had for themselves was higher than the percentage of men and women dissatisfied with the hours they worked. Unpublished survey data compiled for the \textit{Indiana Bar Report} (question 2) (data on file with the \textit{Indiana Law Journal}). The recent ABA Young Lawyers survey reports 61% of women and 55% of men are dissatisfied with the time they have for themselves. \textit{ABA Young Lawyers Report}, supra note 34, at 15.

\textsuperscript{56} Joan Williams argues that "[m]en are raised to believe they have the right and the responsibility to perform as ideal workers [i.e., worker with no child care responsibilities]. [Women] generally feel that they are entitled to the pleasure of spending time with their children while they are small." Joan Williams, \textit{Deconstructing Gender}, 87 \textit{Mich. L. Rev.} 797, 823 (1989). This gender system is consistent with the patterns of satisfaction in the data.
The Wisconsin Bar Report shows that women spend less of their time engaged in promotion and client development. The New Hampshire Report also shows women doing less client development. Women attribute some of the difficulty in establishing contacts to discrimination: they complain of being excluded from social events, such as sporting activities, and from clubs at which business is conducted and contacts are made.

Governments, corporations and public interest/legal services are all work settings in which we find a greater percentage of women than men. In all three settings, the client is provided. In addition to providing the client, most government and public interest jobs, unlike corporate positions, involve few, if any, "social" elements—no business lunches, no golf games, etc. As has been shown, women seem to place a higher premium on having "time to themselves," whether to tend to themselves or to others. This, in itself, would probably make a work setting with fewer kinds of demands (that is, no client development) more attractive. In addition, it also appears from the anecdotal evidence that women are not comfortable meshing their social lives with business activities. To the extent that all avenues of practice should be open to women, firms must rethink the institutional structures for client development. Men cannot be expected to eliminate their own forms of outside activities and socializing, but these activities need not be reinforced with institutional stamps of approval.

3. More Women

Women who work in government also have more female colleagues. The larger numbers of women in government are probably due, in part, to the fact that governments traditionally employed women lawyers when private firms were closed to entry. Over time, there would be a reinforcing effect of having women employees, even as the barriers to other employment opportunities fell. Women would be attracted to organizations where they would not be isolated. There is some evidence to suggest that the greater the number of women in an organization, the less the perception of

57. See, e.g., Indiana Bar Report, supra note 5, at 26. In the Boston survey, 40% of the women and 36% of the men thought men were more successful in attracting clients. Boston Survey, supra note 40, at 20-21. A National Law Journal survey of women at large firms also found that women felt they had a harder time generating business. Emily Counc, Women in the Large Firms: A High Price of Admission?, Nat'l L.J., Dec. 11, 1989, at S2, S10.
58. Women and men in practice five to nine years spend 13% and 23% of their time in client development, respectively. The figures for those in practice ten to fourteen years were 26% for men and 14% for women. Wisconsin Bar Report, supra note 15, at 16.
59. New Hampshire's survey asked respondents to list their three principal responsibilities: 7% of men and 4% of women indicated client development as a principal responsibility. New Hampshire Bar Report, supra note 14, at 245.
60. See, e.g., Counc, supra note 57, at S10; Florida Report, supra note 27, at 219-23; Minnesota Bar Report, supra note 13, at 5.
discrimination and unfairness. The California Bar Report notes an inverse relationship between the percentage of women reporting incidents of sexual harassment and the percentage of women lawyers employed. Similarly, the greater the number of women, the greater the perception of fairness in work assignments. A recent study of the tenure rate of women law professors found that at schools with higher proportions of women, untenured women were denied tenure less frequently. Moreover, women at these schools were granted tenure at higher rates than men. Finally, the attrition rates for women at these schools were lower. While a number of factors may be at work, it would seem that numbers positively affect the work environment for women.

B. Sexual Harassment/Differential Treatment

What is abundantly clear from the data amassed thus far is that women and men perceive the professional world they inhabit fundamentally different ways. Women see a world in which sexual harassment is not uncommon. In overwhelming numbers, women report various forms of differential treatment, such as the use of inappropriate names and comments on their appearance. They hear

61. California Bar Report, supra note 12, at 32 (at least as far as fairness in work assignments is concerned).
62. Id. at 33.
63. Id. at 32.
65. As noted in the Indiana Bar Report, supra note 5, at 28, 11% of women reported physical sexual harassment and 40% reported verbal sexual harassment. In the California survey, 11% of respondents reported experiencing sexual harassment at their present job, 25% at a previous place of employment and 25% in the legal profession generally. California Bar Report, supra note 12, at 32-33. In New Hampshire, 9% of the women reported inappropriate touching by male attorneys in court or in chambers. New Hampshire Bar Report, supra note 14, at 261. In the Minnesota survey of attorneys, conducted in connection with the gender bias study undertaken in that state, 45% of female attorneys reported they are “always, sometimes or often subjected to or have observed verbal sexual harassment from other attorneys.” Eleven percent of female attorneys reported that women are subjected to physical sexual harassment. Minnesota Supreme Court Task Force for Gender Fairness in the Courts, 15 WM. Mitchell L. Rev. 835, 941-42 (1989) [hereinafter Minnesota Report]. In a Maryland survey, 19% of the female attorneys said “[w]omen attorneys are subjected [by judges] to verbal or physical sexual advances.” Forty-seven percent answered affirmatively as to such conduct by other counsel. Maryland Report, supra note 40, at 125.
A survey, which was conducted by the National Law Journal, of women in large firms found over 30% reporting unwanted sexual teasing, jokes, remarks or comments. Fourteen percent reported “unwanted deliberate touching, leaning over, cornering or pinching by a superior.” Counc, supra note 57, at S2.
66. The most data is available on the use of inappropriate names and comments on appearance because the gender-bias studies have focused on this type of behavior in courtroom settings. To give the reader a sense of the consistency and magnitude of reported incidents, Tables A and B set forth the percentages of women reporting use of inappropriate names and comments on
sexist jokes.\textsuperscript{67} They believe judges and other attorneys give their statements less weight than they give men's statements.\textsuperscript{68} And they believe appearance by fellow attorneys (Table A) and by judges (Table B) for a sample of states:

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|}
\hline
\textbf{State} & \textbf{Inappropriate Names} & \textbf{Comments on Appearance} \\
\hline
Indiana & 64\% & 59\% \\
Maryland & 73\% & 76\% \\
Minnesota & 59\% & 59\% \\
New Hampshire & 67\% (outside courtroom) & 56\% (outside courtroom) \\
 & 40\% (in court/chambers) & 23\% (in court/chambers) \\
New Jersey & 85\% & 68\% \\
\hline
\end{tabular}
\caption{(Attorneys)}
\end{table}

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|}
\hline
\textbf{State} & \textbf{Inappropriate Names} & \textbf{Comments on Appearance} \\
\hline
Maryland & 45\% & 54\% \\
Minnesota & 35\% & 42\% \\
New Hampshire & 18\% & 11\% \\
New Jersey & 61\% & 54\% \\
\hline
\end{tabular}
\caption{(Judges)}
\end{table}

\textit{Indiana Bar Report, supra} note 5, at 30; Unpublished survey data compiled for the \textit{Indiana Bar Report} (data on file with the \textit{Indiana Law Journal}); \textit{Maryland Report, supra} note 40, at 123-24; \textit{Minnesota Report, supra} note 65, at 927-28; \textit{New Hampshire Bar Report, supra} note 14, at 259, 261; \textit{The First Year Report of the New Jersey Supreme Court Task Force on Women in the Courts} 13-15 (June 1984) [hereinafter \textit{New Jersey Report}]. In a Rhode Island survey, 80\% of the women reported use of inappropriate names by both attorneys and judges; 53\% reported comments on appearance (question did not break out behavior by actor). \textit{The Final Report of the Rhode Island Committee on Women in the Courts} 9 (1987) [hereinafter \textit{Rhode Island Report}] (section two); see also Judicial Council of the Courts of California, \textit{Achieving Equal Justice for Men and Women in the Courts} 51-59 (1990) [hereinafter \textit{California Gender Bias Study}] (reporting widespread use of inappropriate names and comments on appearance); \textit{Illinois Report, supra} note 24, at A-88 (33\% of women reported experiencing at least one incident of derogatory treatment in previous twelve-month period by a judge; 57\% report having been subjected to derogatory treatment by male litigators); \textit{Florida Report, supra} note 27, at 200-06; Commonwealth of Massachusetts, \textit{Status Report Gender Bias Study of the Supreme Court} 22 (1988). In the \textit{Wisconsin Bar Report, supra} note 15, at 50, 85\% of the women respondents reported that judges behaved in a condescending manner toward women and minorities; 91\% of women reported similar conduct by male litigators.

67. \textit{Indiana Bar Report, supra} note 5, at 33. In the Minnesota survey, 63\% of the women reported that remarks or jokes demeaning to women were made often or sometimes by attorneys; 47\% of women said judges often or sometimes made such remarks. \textit{Minnesota Report, supra} note 65, at 930. Forty-three percent of women in New Hampshire heard sexist jokes by male attorneys in court or in chambers; 21\% reported sexist jokes made by judges. \textit{New Hampshire Bar Report, supra} note 14, at 261. Similarly, in the Maryland survey, 78\% of women reported hearing sexist remarks or jokes by male attorneys; 55\% reported hearing such remarks from judges. \textit{Maryland Report, supra} note 40, at 124-25. In the Rhode Island study, 53\% of the females observed sexist jokes. \textit{Rhode Island Report, supra} note 66, at 9 (section two).

68. Fifty-seven percent of female attorneys in Indiana believe their statements in court are given less weight by opposing counsel, while 40\% believe their statements are given less weight by judges. Unpublished survey data compiled for the \textit{Indiana Bar Report} (question 14) (data on file with the \textit{Indiana Law Journal}). Fifty-seven percent of female attorneys in the Maryland survey
they carry a greater burden of proof than men regarding their capability.\textsuperscript{69} Their world is one in which women receive less respect than their male colleagues and are often treated in a dismissive and patronizing manner. The \textit{New Hampshire Bar Report} stated that, "[o]n the average, women are three times more likely than men to believe that they experience discrimination."\textsuperscript{70}

Men, on the other hand, are (or claim to be) largely unaware of these phenomena. Thus, while two-thirds to three-quarters of the women in nearly every survey indicate that they experience various forms of discriminatory practices ranging from use of inappropriate names and comments on appearance to condescending treatment and lack of respect, only one-fourth to one-third of the men report observing such behavior.\textsuperscript{71}

One male in the Indiana survey wrote that the sexist joke was meant in good fun and not to offend. The lack of self-consciousness in this statement captures much of what is occurring. Men often claim not to understand what is offensive to women or refuse to concern themselves with the hearer's sensibilities. As a result, many men dismiss women's

---

69. See, e.g., \textit{California Gender Bias Study}, supra note 66, at 30-31; \textit{Florida Report}, supra note 27, at 216-19 (describing the bias in work assignments and salary against women with equal credentials with their male counterparts); \textit{Illinois Report}, supra note 24, at A-85 (three-fourths of female respondents agreed with the statement that "female counsel must establish competence" compared with less than one-third of the male respondents who agreed).


71. Table C sets forth, using a sample of states, comparative figures for male and female respondents who indicated they had observed the use of inappropriate names, comments on appearance and lack of respect by other attorneys:
complaints of discrimination as imaginary or overly sensitive reactions to well-intentioned acts.\textsuperscript{72}

It is clear from the consistency of the data, however, that the activities women complain of are not imaginary. Observers of court proceedings in Rhode Island found an average of 1.64 incidents of gender bias for every hour in court.\textsuperscript{73} Men exhibited gender bias twice as often as women.\textsuperscript{74} The biased male behavior that was observed often consisted of use of familiar names and extraneous remarks with sexual content or implications. Gender bias exhibited by women primarily consisted of women adopting a "stereotypical" female role, defined as adopting passive behavior or speaking softly.\textsuperscript{75}

Thus far, the work of the various task forces has been to verify the legitimacy of the complaints and to take seriously the effects of discrimination as experienced by the victims. This legitimization must be brought into our legal institutions through formal mechanisms to educate members of the profession as to what is, and is not, appropriate behavior and to sanction that which is not.

C. Family Concerns

The Indiana Bar Report's findings as to the division of family labor largely replicate the findings in other studies of lawyers and professionals

\[
\begin{array}{|c|c|c|c|c|c|c|c|}
\hline
 & \text{Use of Inappropriate Names} & \text{Comments on Appearance} & \text{Lack of Respect/Demeaning Remarks*} \\
 & F & M & F & M & F & M \\
\hline
\text{Indiana}\textsuperscript{**} & 64\% & 23\% & 59\% & 26\% & 69\% & 17\% \\
\hline
\text{Maryland} & 73\% & 26\% & 76\% & 35\% & 78\% & 35\% \\
\hline
\text{Minnesota} & 59\% & 18\% & 59\% & 25\% & 47\% & 13\% \\
\hline
\text{New Hampshire (outside court)} & 40\% & 12\% & 23\% & 15\% & n/a\textsuperscript{***} & \\
\hline
\text{New Jersey} & 85\% & 45\% & 68\% & 45\% & 86\% & 68\% \\
\hline
\text{Rhode Island} & 80\% & 49\% & 53\% & 25\% & 53\% & 27\% \\
\hline
\end{array}
\]

* In some surveys, questions were asked about the use of demeaning, hostile remarks about women or sexist jokes. For purposes of illustrating the differences in perceptions, I have treated these questions as substantively the same as questions which asked specifically about lack of respect.

** Numbers are limited to "often" or "sometimes" responses and do not include "rarely" response.

*** Specific question not asked.

72. See Indiana Bar Report, supra note 5, at 32 (noting that 30\% of men think "women make too much of an issue of sex discrimination"); see also Illinois Report, supra note 24, at A-84 (36\% of males and 13\% of women think female counsel are unduly sensitive).

73. Rhode Island Report, supra note 66, at 12 (section one).

74. Id. at 13.

75. Id.
Women carry most of the burden of family responsibilities, particularly as they relate to child care. The lopsided division of family responsibilities has, of course, tremendous impact on the behavior of women lawyers in terms of the time demands and conflicts which arise out of women's many roles. It affects where women work and their opportunities to advance.

Family division of labor also has profound effects on women's fundamental lifestyle decisions. A 1984 survey of 3,000 lawyers conducted for the Young Lawyers Division of the ABA found that 22% of the women were single compared with 15% of the men. Fifty-six percent of the women and 40% of the men were childless. Thirteen percent of the women were divorced compared to only 4% of the men. Figures from the New Hampshire survey show 25% of women have never married, compared with 13% of the men; 9% and 4% of women and

76. Studies indicate that women perform about 70% of the housework (including child care) in an average household and are generally expected to adjust to the changing family life cycle. Hedie Hartmann, The Family as the Locus of Gender, Class, and Political Struggle: The Example of Housework, 6 Signs 366, 385 (1981); see also JoAnn Vanek, Household Work, Wage Work, and Sexual Equality, in Women and Household Labor 275, 276-80 (S. Berk ed. 1980); Mary Jo Bane, Laura Lein, Lydia O'Donnell, C. Ann Stueve & Barbara Wells, Child-Care Arrangements of Working Parents, 102 Monthly Lab. Rev 50, 52-53 (Oct. 1979).

In a 1977 national study of dual-career families, husbands of working wives were found to devote 2.7 hours more per week in child care than husbands of full-time homemakers. Joseph Pleck, Men's Family Work: Three Perspectives and Some New Data, in 2 Wellesley College Center for Research on Women Publications 16-17 (1979). A 1983 study based on couples where both parents worked found that 18% of the women did more than twenty hours of housework (including child care) a week compared to 4% of men who did more than twenty hours a week. Philip Blumstein & Pepper Schwartz, American Couples: Money, Work, Sex 144-50 (1983). In a 1985 study, 57% of fathers thought that they were as involved in child care responsibilities as their wives, but independent raters found that 32% actually were as involved. Lucia Gilbert, Men in Dual-Career Families: Current Realities and Future Prospects 74-75 (1985).

In a study of 500 practicing lawyers, 64.7% of the women with children (53.9% of the women reporting) said that they spent more time with their children than the fathers, 5.9% said that the fathers spent more time and 22.4% said they shared child care responsibilities equally. Of the men with children (48.3% of the sample), 2.4% reported spending more time, 83.9% reported spending less time than the mothers and 12% spent equal time. Lieffland, Career Patterns of Male and Female Lawyers, 35 Buffalo L. Rev. 601, 607-08 (1986). It is interesting to note that among law students of both sexes, women are expected to be the primary care giver. In a poll of Stanford students, women expected to devote twice as much time to child rearing as men. Eighty-three percent of women (compared to 18% of men) expected to devote 35 or more hours per week to child rearing. Even men who were interested in equal responsibility for child care expect to spend a median of 25 hours per week on child care compared to 40 hours per week for women who want equal responsibility. Project, Law Firms and Lawyers with Children: An Empirical Analysis of Family/Work Conflict, 34 Stan. L. Rev 1263, 1280-84 (1982).

77. Stephane Goldberg, Is This All There Is?—Women and Job Satisfaction, A.B.A. J., June 1, 1988, at 72.

78. Id.

79. Id.
men, respectively, are divorced. To Fifty-two percent of women and 72% of men have children. In the California Bar Report, 62% of the respondents did not have children, 42% had decided to postpone having children, 31% were delaying making a decision and 27% had decided not to have children at all. The California study found correlations between respondents who were postponing having children or delaying making a decision with those respondents who felt maternity benefits at their workplaces were inadequate and with those respondents who felt that taking maternity leave would adversely affect their chances for promotion or advancement. Similarly, 56% of the women with children in the New Hampshire survey felt that their choices based on child care needs hurt their careers (compared with 14% of the men). These statistics raise the question whether, at a time when 40% of our law school graduates are women, society as a whole is served by a legal profession that seems to demand of women that they make the significant sacrifices of foregoing marriage and children.

III. Where Do We Go From Here?

There are other gender bias studies underway, but it seems unlikely that the general picture we have now of the present status and role of women in the law will change. What does it all mean for the legal profession? In a recent article, Carrie Menkel-Meadow argues for shifting the focus of the study of women in the profession from the current emphasis on the pace of assimilation of women into large law firms, and the related issue of how women accommodate career and family, to an analysis of the content of lawyering conducted by women. Do women approach their clients’ problems differently from men? Do they place more emphasis on less adversarial forms of dispute resolution? Do they observe and resolve conflicts between professional obligations and personal moral codes differently? If the answers

81. Id. at 250-51; see Indiana Bar Report, supra note 5, at 36-37 (containing figures for Indiana). Similarly, in Wisconsin, 80% of the men and 57% of the women respondents are married. Seventy-six percent of the men have children compared with 42% of the women. Wisconsin Bar Report, supra note 15, at 16. Florida reports similar figures. Florida Report, supra note 27, at 223-24; see also Deborah Holmes, Structural Causes of Dissatisfaction Among Large Firm Attorneys: A Feminist Perspective, 12 Women’s Rts. L. Rep 9, 17-20 (1990) (containing a discussion of the consequences for women of the failure of law firms to deal with child rearing issues).
82. California Bar Report, supra note 12, at 53-54. In the National Law Journal survey of women at large law firms, 42% of the respondents reported having delayed having children to pursue a career. Counc, supra note 57, at S11.
to these questions are yes, can we observe, given the numbers of women in the profession, an overall change in lawyering behavior?

The works discussed in this commentary fall, to a large extent, in the first category of study; they measure women's status within the existing structures. But, they have yielded some information relevant to the issue of "feminization" of the legal profession. Women do not seem to differ significantly from men in their reasons for choosing law as a profession or in defining the important attributes of their employment. Limited opportunities to advance and salary differentials, moreover, are not confined to the large law firms or to law firms generally. Subtle differential treatment is pervasive. All this suggests that women are still struggling to be recognized. Differences in lawyering "styles" between women and men, if they exist, are going to be hard to identify at this stage. Nor can we say with any certainty that what differences we observe in lawyering styles are not, in fact, reflections of existing gender bias practices.

That the legal profession remains biased is not surprising given the near exclusion of women as recently as twenty years ago. Whether the situation will improve as the curmudgeons of the profession retire is not so certain. Data on compensation differentials, harassment, the burden of family and child care responsibilities, and attitudes and perceptions of discrimination do not limit the problems of discrimination and differential treatment to any particular age group or to any particular segment of the profession.

How men deal with women at work in terms of sexual harassment and differential treatment is consistent with their patterns of behavior toward their family responsibilities. Men may have accepted at one level the entrance of women into the work force, but, by and large, they have not changed

85. An example of a recent empirical study on whether such differences exist is RAND JACK & DANA CROWLEY JACK, MORAL VISION AND PROFESSIONAL DECISIONS (1989), in which the authors, based on interviews with 36 practicing lawyers, conclude that women do bring a "different point of view to the practice of law." Id. at xi. Women were more likely to have a care morality, while men exhibited a rights orientation. See also Cahn, supra note 30, at 43-49, for a discussion of the literature concerning differences in male and female lawyering.

86. The difficulty with studies, such as the Jacks' study, supra note 85, is that they do not account for the effects of existing gender bias on their samples. Women may view lawyering in terms of care and protection of victims rather than in terms of institutionally defined rights because women have been victims and have been denied their rights. See generally CATHARINE MACKINNON, FEMINISM UNMODIFIED (1987) (powerful critique of gender differences as socially constructed under patriarchy). See also Deborah Rhode, Perspective on Professional Women, 40 STAN. L. REV. 1163, 1207 (1988) (issuing a similar warning on assuming a feminization of the workplace will follow the entrance of women). The Jacks' study, in particular, focuses on how lawyers define the interplay between their role as lawyers and their personal moral codes. But, it is not clear from their study that the way in which women perceive this interplay changes the way they act. In fact, only two of the eighteen women in the study said they had reshaped their roles to resolve the tension between the traditional role of the lawyer and their codes of morality. R. JACK & D.C. JACK, supra note 85, at 149-54; see also Holmes, supra note 81, at 26-27 (sounding a note of caution about assuming that the "different voice" of women translates into different lawyering styles).
their attitudes about women's roles as homemaker and caretaker. They continue to place primary responsibility for the satisfaction of their non-work related needs on women. Thus, it is not surprising that many men view women at work in traditionally sexual terms.87

Ultimately, the pervasiveness of gender bias throughout the legal profession means that there will be no single solution to all problems for all segments of the profession. Lawyers and their institutions need to change fundamentally the way they do business so that women can participate as fully and equally as men in the legal profession.

87. In the Rhode Island survey, a majority of male and female attorneys agreed "women should take their rightful place in business." However, one-fourth of the men also thought there were jobs where in hiring and promotion preference should be given to men. One-third of the men did not think women's social and economic freedom was worth more than the ideal of femininity. Rhode Island Report, supra note 66, at app. (exhibit C at 12).