The Future of Women in the Legal Profession: Recognizing the Challenges Ahead by Reviewing Current Trends

Maria P Lopez
The Future of Women in the Legal Profession: Recognizing the Challenges Ahead by Reviewing Current Trends

María Pabón López

I. Introduction: Setting the Stage

From an early history of women’s exclusion from the legal profession—which continued well into the mid-twentieth century—to present day achievements, it is current conventional wisdom that women lawyers appear to have “arrived.” In other words, the presence of women in the profession has experienced a dramatic progression from exclusion to full integration into all aspects of the practice. After all, 50% of those in law school now are women and nearly one third of the lawyers in the profession are female. But just the numbers of female law students and attorneys alone do not tell the complete story about women in the legal profession.
profession and how they fare in this traditionally male domain. As a response to this phenomenon, and in order to investigate ways to understand and improve gender fairness in the legal system and the profession, the American Bar Association, as well as many states and the federal courts, have since the 1980s established commissions to study the status of women in the profession.

The evidence which has been emerging indicates that although women are entering the practice of law at high rates, they are failing to reach the higher levels within the profession, for example, partnership. In particular, in 1988, the American Bar Association’s Commission on Women in the Profession examined the status of women practicing law and “found persistent gender discrimination throughout the legal profession.” Similarly, in 1990, the Indiana State Bar Association’s Commission on Women in the Profession studied gender concerns and the status of women attorneys in the legal profession in Indiana and found extensive gender bias in the courts and in the legal system. This finding was consistent with those of similar commissions or task forces in other states. In order to address the biases found in the 1990 Indiana State Bar study, recommendations were made so that the legal

---

5 This is in contrast to for example, nursing, social work, librarianship or education, which have traditionally been viewed as more female occupations. See Lisa Catanzarite, Still a Man’s World: Men Who Do “Women’s Work.” 101 AM. J. SOC. 766-767 (1995).

6 I note that the topics of race and/or diversity in the profession have very often both been included in these studies. Such inclusion responds naturally to the phenomenon of intersectionality, or overlap of these two factors, race and gender in the experiences of those who come in contact with the legal system. The term intersectionality was coined by Professor Kimberle Williams Crenshaw in her leading article, Demarginalizing Race and Gender, 1989 U.CHI. L. F.139. However, the analysis of race is outside of the scope of this article, even though some of the findings about women in the profession, for example, the excessive rates of attrition, are especially applicable to women of color. See e.g. Jill Schachner Chanen, Early Exits: Why Women of Color are Vanishing from Large Law Firms, ABA J., Aug. 2006 at 33. Further research into this area is clearly needed.


9 Gellis, supra note 8, at 941.

10 Id. (Citing Letter from Russell H. Hart, President of the Indiana State Bar Association (Aug. 3, 1988)). This letter created the Commission.

11 Gellis, supra note 8, at 941.
profession would fundamentally change the way it did business to allow women to participate as fully and equally as men.12

In response to the burgeoning movement of the creation of task forces and commissions to study race and gender concerns, the Indiana Supreme Court created its Commission of Race and Gender Fairness in 1999.13 In 2004, the Indiana Supreme Court Commission of Race and Gender Fairness conducted a follow-up study regarding women in the law to determine whether the situation had improved for women practicing law in Indiana.14 In the almost fifteen years that have passed since the first Indiana study, the trend identified in 1990 continues - very few women are reaching the top echelons of the legal profession.15 Thus, the status of women in the legal profession is at a critical moment where growth in their numbers alone does not equal progress and instead, women’s advancement should be the key to assessing progress.

This article evaluates the data collected in the most recent Indiana study (conducted in 2004) in order to assess which areas of gender bias have improved for women in the profession and which areas can stand improvement. The article proceeds in five parts. Part II explores the history of women in the legal profession, to establish the baseline from which the evolution of women in the legal profession can be assessed. Part III compares the findings from the 2004 study to the findings of the 1990 study and draws conclusions regarding the overall occurrence of gender bias in Indiana through the experiences of women in the legal profession in the state. Part IV examines how the instances of gender bias and the experiences

12 Gellis, supra note 8, at 976.
13 INDIANA SUPREME COURT COMMISSION ON RACE AND GENDER FAIRNESS, HONORED TO SERVE: EXECUTIVE REPORT AND RECOMMENDATIONS 3 (2002)
14 The Survey Research Center at IUPUI, Gender Issues within the Indiana Judicial System, Prepared for the Indiana Supreme Court Commission on Race and Gender Fairness (2005) [hereinafter “2004 Indiana Report”].
of women in the legal profession in Indiana measure up to those of other parts of the country by using comparative data from other jurisdictions. Part V offers conclusions and recommendations on how the situation can be improved and calls for further study on the topic of gender equality in the legal profession.

II. History of Women in the United States Legal Profession – Early Milestones and Accomplishments

A. Colonial Times to the Nineteenth Century

In order to understand the present critical moment and face the challenges ahead, it is helpful to review the accomplishments of women in the American legal profession thus far. Women lawyers have sought the ability to practice law and acceptance into the profession from the earliest times in our nation’s history. The first woman who practiced law during colonial times was Margaret Brent, who arrived in the Colony of Maryland in 1638.16 Ms. Brent is recorded in history for her demand to vote twice in the Maryland Assembly: once herself as a landowner and then as an attorney representing the Lord Proprietor, her cousin Lord Baltimore.17 The authorities denied both requests.18 The historical record does not evince any other female

---

16 See MORELLO supra note 2 at 4; see also, Lois Green Carr, Margaret Brent:1601 – 1671, in NOTABLE AMERICAN WOMEN VOLUME I (Radcliffe College, 1971) (Available at Woman a Week Archives, http://www.awomanaweek.com/brent.htm); see also Lois Green Carr, Margaret Brent: A Brief History, Maryland State Archives (Available at http://www.mdarchives.state.md.us/msa/speccol/sc3500/sc3520/002100/002177/html/mbrent2.html ). Notably, after being a little known in history, Ms. Brent is now more widely known. For example, the American Bar Association honors Margaret Brent every year with its Margaret Brent Women Lawyer of Achievement Awards, see http://www.abanet.org/women/awards.html. I note that I use the use of the terms Ms. or Mrs. when referring to the women lawyers to signal their marital status.

17 Lois Green Carr, Margaret Brent:1601 – 1671, in NOTABLE AMERICAN WOMEN VOLUME I supra note 16; see also Lois Green Carr, Margaret Brent: A Brief History, supra note 16.

18 Id.
women practicing law until the nineteenth century; however it does show several women as pro se litigants in Colonial court.\textsuperscript{19}

Women’s slow but steady steps towards acceptance and equality in the practice of law continued in post-Colonial times. In the latter part of the nineteenth century, the \textit{Chicago Legal News} noted the burgeoning jury practice of Mrs. Mary E. Magoon, a lawyer in North English, Iowa County.\textsuperscript{20} In 1869, Arabella A. Mansfield passed the Iowa state bar examination. Because she was the first woman to do so in any state, she is often recognized as the first woman lawyer in the United States.\textsuperscript{21}

Also in 1869, Myra Colby Bradwell, passed the Chicago bar exam.\textsuperscript{22} Mrs. Bradwell, the wife of a Cook County Circuit court judge, had been the founding editor in 1867 of the \textit{Chicago Legal News}, the first legal journal of the West.\textsuperscript{23} Because she had passed the examination, Mrs. Bradwell petitioned the Illinois Supreme Court for a license to practice law.\textsuperscript{24} The Illinois Supreme Court twice denied her petition - once on the grounds that because she was a married woman, she could not enter into contracts; and the second time, because she was a woman.\textsuperscript{25} The court found that traditionally there had been no women lawyers in England and it was concerned about the “effect of the presence of women as barristers in [the] courts would have upon the administration of justice.”\textsuperscript{26}

Mrs. Bradwell appealed to the United States Supreme Court, asserting that under the Fourteenth Amendment and Article IV of the United States Constitution, she was entitled to the

\begin{footnotes}
\item[20] Id. at 11.
\item[21] Id. Mrs. Mansfield was also often known by her nickname and married name, Belle Babb Mansfield. \textit{I.}
\item[22] MORELLO, \textit{supra} note 2, at 14.
\item[23] Id.
\item[24] Id. at 15.
\item[25] Id. at 16-17.
\end{footnotes}
privileges and immunities of all citizens of the United States and should be admitted to practice law on the same footing as men. The Supreme Court denied the appeal, holding that the right to practice law is not one of the citizenry’s privileges and immunities that the Constitution prohibits states from abridging. Justice Bradley, concurring, penned the following language, evocative of the views about women predominant at the time: “[t]he paramount destiny and mission of woman are to fulfil [sic]the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things, and cannot be based upon exceptional cases.” Years later, in 1890, the Illinois Supreme Court, sua sponte, finally allowed Mrs. Bradwell to practice law by granting her license.

The late nineteenth century saw the United States Supreme Court admit Belva Lockwood to the bar of the Supreme Court. She is recognized as the first woman lawyer who appeared before the Court. With the passage of time, women lawyer pioneers broke new ground and entered into arenas where women had previously been excluded from the legal profession.

B. Women Lawyers in Indiana – Present from the Nineteenth Century

While Mrs. Antoinette Dakin Leach is the best known female attorney pioneer--as she was the first female attorney admitted by the Indiana Supreme Court to practice law in 1893, in fact other women in the state had previously been admitted to practice law before the lower courts.

---

27 MORELLO, supra note 2, at 19.
29 MORELLO, supra note 2, at 19.
30 Id. at 21.
31 SUPREME COURT DECISIONS AND WOMEN’S RIGHTS: MILESTONES TO EQUALITY 214 (Clare Cushman, ed. 2001)
32 Id.
As with other states, at the time, Indiana had no centralized register of licensed attorneys; applicants filed petitions to be admitted to practice at the circuit court in their county. A few county courts decided to admit women to practice law and overlook the state constitutional voter registration requirement. At least two women lawyers were admitted to the bar by circuit courts prior to Mrs. Leach’s admission by the Supreme Court. The Vigo Circuit Court admitted Bessie Eaglesfield in 1875 to the practice of law; she obtained her law degree from the University of Michigan School of Law two years later. She practiced law in Terre Haute, Indianapolis, and Grand Rapids, Michigan during her professional career.

In 1886, the Hendricks Circuit Court admitted CeDora Lieuellen to the bar. A few other women were admitted to the bar in the state around the same time as Mrs. Leach, yet it was her appeal to the Indiana Supreme Court in 1893 that resolved the issue for the entire state.

The experience of the earliest woman to practice law in Indiana, Mrs. Antoinette Dakin Leach, is telling of the struggles of women to join the practice of law. Like the other women applicants who preceded her, Mrs. Leach had first petitioned the circuit court for admission. The Greene Circuit Court denied Mrs. Leach admission to the bar because she was not a

35 Barteau, supra note 33, at 55.
36 Id.
37 Barteau, supra note 33, at 56.
38 Id. It should be noted that the University of Michigan Law School was a leader in the admission of women to law school. For example, its alumna Sarah Kilgore Wertman was the first woman in the country to enter law school and be admitted to practice law. See Margaret Leary, Michigan's First Woman Lawyer, JOURNAL, Spring 2006 at __. University of Michigan Law School graduated more women by 1890 than any other law school in the country and predated other leading law schools in the admission of women by many decades. For example, Harvard Law School first admitted women in 1950. MORELLO, supra note 2, at 100.
39 Barteau, supra note 33, at 56
40 Barteau, supra note 33, at 59.
42 Barteau, supra note 33, at 59.
registered voter, yet it made a special finding that Leach was of good moral character and was
learned in the law.\textsuperscript{43} Mrs. Leach then appealed to the Supreme Court “the issue of whether an
applicant’s gender, which denied her the right to vote, was sufficient to bar her from the legal
profession.”\textsuperscript{44} Finding that that there was no justification for excluding women from the practice
of law, the Indiana Supreme Court granted Mrs. Leach the remedy she sought, and admitted her
to the practice of law in Indiana.\textsuperscript{45} Thus, the Indiana Supreme Court granted Leach’s petition,
even though the Indiana Constitution allowed only registered voters to become members of the
bar and at the time, women were not able to vote. The Supreme Court’s action of admitting Mrs.
Leach’s to the practice of law in Indiana is noteworthy because it was the first state to admit
women to practice law without a statute or constitutional amendment.\textsuperscript{46}

C. Modern Times for Women Attorneys in the United States: The Twentieth Century to
the Present Times

With the passage of time, greater numbers of women have been admitted to law school
and have entered the legal profession in the country. Over time, women lawyers started to
become judges, law professors and law school deans. The entry of individual women into certain
areas of the legal profession met with some resistance. In a well known example, Sandra Day
O’Connor, who would later become the first woman United Supreme Court Justice, was unable
to find an attorney position in 1952 after graduating second in her law school class at Stanford;

\textsuperscript{43} Id..
\textsuperscript{44} Id.
\textsuperscript{45} Id.
\textsuperscript{46} See Randall T. Shepard, \textit{Equal Opportunity For Women Is Not Just “Women’s Work,”} 36 U. TOL. L. REV. 977, 978 (2005). Mrs. Dakin Leach’s admission was commemorated one hundred years after in a centennial admission
years after the admission of Mrs. Leach, there were 3006 women lawyers in Indiana. \textit{Id.} Notably, the Indianapolis
Bar Association honors Mrs. Leach’s accomplishment yearly when it grants the Antoinette Dakin Leach award “to
honor a female lawyer's professional and personal accomplishments.” \textit{See} Indianapolis Bar Association, “Hon
Patricia Gifford Receives Antoinette Dakin Leach Award,” at \textit{http://www.indybar.org/newslettermain.cfm?ID=553.}
the only offer she received was to work as a legal secretary. The early pioneers entering the profession had to work their way and make their own paths through the predominantly male legal profession.

Over time, the identification of a phenomenon of the “glass ceiling” impeding women’s progress in the profession became evident in the legal field. An example of such a glass ceiling is evidenced in the low numbers of women partners at large law firms. The American Bar Association, in response to this and similar concerns, created the Commission for Women in the Profession to “to assess the status of women in the legal profession, identify barriers to advancement, and recommend to the ABA actions to address problems identified.” Thus, the legal profession has turned its gaze inward to analyze women’s performance and the obstacles they face in the practice of law. As a result, in Indiana, the Race and Gender Commission has recently studied the status of the women in the legal profession in 2004 and the Indiana State Bar Association studied the status of women in the profession in 1990. The next section will compare the two and assess the current status of women in the legal profession in Indiana.

III. Comparison of the Indiana 1990 study to the 2004 study: Have the achievements and experiences of female attorneys in Indiana improved?

A. Summary of Findings

51 See supra notes 9-15 and accompanying text.
52 See supra notes 10-15 and accompanying text.
 Comparative analysis of the data that the two studies yield evinces the following main findings. Although the number of women in the legal profession in the state has considerably increased, doubling from 15% to 31%, there are still major disparities in key areas for female lawyers.\textsuperscript{53} The areas in which women attorneys experience significant disparity compared to their male counterparts include financial compensation, perceptions of their competency, and perceptions about their commitment to the practice of law. The fact that women attorneys are perceived as less committed to the practice of law may result in disadvantages in today’s very competitive legal workplace.\textsuperscript{54}

With regard to improvements in the status of women in the legal profession in Indiana in the last fifteen years, a significant increase in the percentage of female respondents who report not having observed or experienced physical sexual harassment is notable. Yet another improvement is the heightened growth in the number of women attorneys practicing in private law firms, an area of legal practice which is perceived as more prestigious than government or public interest. Finally, the balance of work/family responsibility is one area where there has been some improvement for women lawyers, as will be further discussed below.

B. Methodology of the 2004 study

The full methodology of the research done for the 2004 Indiana Report is reprinted as Appendix A. In brief, the Survey Research Center at Indiana University – Purdue University Indianapolis prepared and sent out a questionnaire to two thousand attorneys licensed in Indiana. The attorneys, randomly chosen, were to assess “their experiences and views with regard to

\textsuperscript{53} See Gellis \textit{supra} note 8 at 943; see also Indiana 2004 Report, \textit{supra} note 14 at 5.

\textsuperscript{54} See \textit{e.g., supra} note 175 and accompanying text of male respondent’s view of women’s commitment to the practice of law.
gender issues within the judicial system.”55 With a close to fifty percent response rate, questionnaires yielded sufficient usable data from which to analyze current trends.

C. Demographic Picture of Women Attorneys in Indiana- Numbers, Age and Years of Practice and Geographic Location

As could be expected by the passage of time, the number of female attorneys in Indiana has experienced a great increase since the early nineties.56 The following is the comparative data which will be used to assess the growth of women in the practice to the growth of lawyers overall in the state. The number of Indiana registered lawyers increased from 10,349 lawyers in 199057 to 15,606 in 2004.58 The number of women members of the Indiana bar has doubled from 15 percent in 1990 to 31% in 2004.59 Thus, the rate of growth of women lawyers has exceeded the overall rate of growth of attorneys in the state. This greater presence of women in the profession has led to what is characterized as the “no problem problem”60- that the situation of women in the legal profession is improving or already has improved on its own. For example, a female judge respondent wrote in the comments section of the 2004 Indiana survey: “Female attorneys are so prevalent that gender issues fade over time. It is nothing special for female attorneys to appear on any case, although most are on civil matters, and not criminal matters. I believe they are treated the same in my court.”61

The dearth of women in leading positions in the profession in 1990 was analyzed at the time as a consequence of the fact that the women in the field were younger and less experienced

56 All of the statistics included in the comparison between 1990 and 2004 are from the two reports from Indiana, the Indiana State Bar Association, Report of the Commission on Women in the Profession 10 (Oct. 18, 1990) [hereinafter Indiana Bar Report] (copy on file with author) and the 2004 Indiana Report, supra note 14.
57 Gellis, supra note 8, at 942.
58 Interview with Associate Executive Director Susan Jacobs, Indiana State Bar Association, June 2006.(on file with author).
60 See Deborah Rhode, Gender and the Profession: The No-Problem Problem, 30 HOFSTRA L. REV. 1001 (2002).
61 See 2004 Indiana Report, supra note 14, at 61, Comment 782.
in the legal profession. This trend of few female lawyers in leading positions continues today, although women attorneys are older and more experienced. For example, in 1990, the median age for female lawyers in Indiana was thirty-five and for men forty-one, whereas in 2004, the median age for women was forty and for men forty-nine. The gap between the ages of men and women has increased, possibly because the older, more experienced female attorneys may no longer be practicing law.

Further analysis of the age-gender correlation for attorneys shows that in 1990, almost three quarters of the women lawyers in Indiana were under forty years old. Yet by 2004, the number of women lawyers under forty decreased to approximately 50 percent. Female attorneys are also narrowing the gap with regard to their years of experience in the practice of law. When comparing the data from 1990 to 2004, 92.3 percent of women had fifteen years or less of experience in 1990, whereas in 2004, that number dropped to 65 percent of women who had fourteen years or less of experience in the practice of law. Notably, in terms of years of experience in the practice of law, the largest grouping of men falls at the opposite end of the largest grouping of women: approximately a quarter of female attorneys had five to nine years of experience while one third of all male attorneys had twenty-five to thirty-nine years of experience.

With regard to the geographic location of lawyers in Indiana, there has not been significant change since 1990 as to where they work. Of large cities, large towns, or small towns in the state, most attorneys are still more likely to work in large cities. Furthermore, it is women

62 See Gellis supra note 8 at 944.
64 See Gellis supra note 8 at 943.
65 See 2004 Indiana Report, supra note 14, at 5.
66 See Gellis supra note 8 at 944.
68 Id.
attorneys who outnumber men lawyers in this geographical distribution. The numbers show this trend and a modest increase in Indiana attorneys working in large cities. In 1990, 62 percent of women and 54 percent of men worked in large cities, whereas in 2004, it was 64.2 percent of women and 53.7 percent of men who did so. The representation of men and women attorneys in large towns changed more than either of the two other geographic areas, and showed a decrease. In 1990, 12 percent of women attorneys and 28 percent of men lawyers were employed in large towns, while only 9.6 percent of women and 17.6 percent of men did in 2004. Finally, in small towns, six percent of women and 11 percent of men worked there in 1990 whereas in 2004, those numbers decreased to 7.7 percent of women and 7.2 percent of men.

D. Types of Experiences in Legal Practice: Trends in Women’s Employment Rates

1. Workplace Distribution by Type of Legal Practice

Women lawyers are currently represented in all forms of legal employment. The type of legal practice where the data shows a decrease in representation of women is the corporate sector, where they comprised 7 percent in 2004, down from 11.1 percent in 1990.

It is interesting to note that state and local government work is the legal employment that saw the largest increase for both genders. Women lawyers in state and local government increased from 16.6 percent in 1990 to 23.9 percent in 2004 and male attorneys in such

References:

69 See Gellis supra note 8 at 946.
70 See 2004 Indiana Report, supra note 14, at 8.
71 See Gellis supra note 8 at 946.
72 See 2004 Indiana Report, supra note 14, at 8.
73 See Gellis supra note 8 at 946.
74 See 2004 Indiana Report, supra note 14, at 8.
75 See 2004 Indiana Report, supra note 14, at 8. There was a decrease in employment categorized as “other,” where the change decreased from 7.2 percent in 1990 to 5.9 percent in 2004. “Other” excludes private practice, government, academic, corporate and the judiciary. See 2004 Indiana Report, supra note 14, at 7.
76 See Gellis supra note 8 at 945.
77 See id.
practice more than doubled their representation in this field, from 5.1 percent in 1990 to 11.3 percent in 2004.80

The largest decrease in the representation of male lawyers was in the private practice—firm category, where they decreased from 54.8 percent in 1990 to 50.6 percent in 2004.81 For women lawyers, the number remained essentially the same, where 39.4% of women lawyers worked in private practice firms in 1990 and that number in 2004 was 40.4%.82

The overall presence of women lawyers at the workplace is one area which the 2004 survey data showed a measure of progress. Whereas in 1990 the majority of men attorneys had no female colleagues,83 by 2004 this number had decreased to 39.5 percent of men lawyers who indicated that they had no female colleagues.84

Furthermore, there has been over a 10 percent increase in the number of male attorneys who work in firms with three or more female attorneys.85 There has also been an increase in the number of women who work with three or more female attorneys86 although the percentage of women who are the only female in their firm has remained relatively constant at close to one third of all women attorneys surveyed.

79 See Gellis supra note 8 at 945.
80 See 2004 Indiana Report, supra note 14, at 7.
81 See Gellis supra note 8 at 945.
82 See 2004 Indiana Report, supra note 14, at 8.
83 See Gellis supra note 8 at 945.
85 The figure was 52.1 percent. When the number of male attorneys who worked without female colleagues was adjusted to exclude sole practitioners it was high, 45 percent in 1990. See Gellis supra note 8 at 945.
86 When the number of male attorneys who worked without female colleagues was adjusted to exclude sole practitioners it was even lower, 27 percent in 2004. See 2004 Indiana Report, supra note 14, at 8.
87 The number increased from 23 percent of men attorneys who worked with four or more female attorneys in 1990 to 34.2 percent of men attorneys who worked with four or more female attorneys in 2004. Id.
88 The number increased from 43 percent of women attorneys who worked with four or more female attorneys in 1990 to 50.2 percent of female attorneys who worked with four or more female attorneys in 2004. Id.
The top two types of legal employment in which half of the respondents indicated that they work with four or more female attorneys are the federal government and state and local government. In both of these, there were large increases from the 1990 study: for the federal government, it was a 19 percent increase and for state and local government, a 24.6 percent increase. An anecdotal narrative from a female respondent shows the importance of government employment: “I work in a gov’t [sic] office where things are probably much more fair between genders than in a law firm.” Yet another woman respondent shared her thoughts about the prevalence of women in certain government employment:

I do not see gender discrimination as an issue. I have noticed that there seem to be more female child abuse and domestic violence prosecutors than men, but I believe that these women have chosen their field. I’ve noticed that men are less likely to be vying for these positions. So I don’t consider this a discriminatory issue, but find it interesting nonetheless. Perhaps nature plays a role in personal choice.

The judiciary one of the two employment sectors which experienced the largest increase in the presence of four or more women lawyers in the workplace. The increase was marked, from 2 percent in 1990 to 27 percent in 2004. The respondents in the private practice of law at firms

---

89 The survey responses indicating that the respondent worked in an organization with four or more female attorney colleagues were correlated with the responses regarding their type of employment, in order to assess in which types of legal employment greater numbers of women are found. See 2004 Indiana Report, supra note 14, at 8, Figure 2 (Percentage of All Lawyers Reporting 4 or More Female Colleagues by Organization Type (1990, 2004).
90 See id.
91 Id. at page 51, Comment 257.
92 Id. at page 51, Comment 695.
93 Id. at page 8, Figure 2.
who reported the presence of four or more women in the workplace also experienced an increase, from 10 percent in 1990 to 38.8 percent in 2004.94

In contrast to the government, the public interest/legal services sector saw a marked decline in the presence of four or more women lawyers in the workplace, from 49 percent in 1990 to 28 percent in 2004.95 In 1990, it was the public interest sector which had had the highest percentage of attorneys who reported having three or more female colleagues.96 In 2004, public interest dropped to the lowest percentage. 97 Further research into this area is warranted, as the reasons for this marked change are unclear.

2. Other aspects of Women Lawyers Employment Experiences: Hours, Part Time and Work Life Balance

a. Hours Worked

Among other notable aspects affecting the experiences of female attorneys in the legal workplace are the number of hours worked, the availability of part-time work schedules and the balance of work and home life. The available data shows that men and women attorneys average the same number of work hours.98 While the average number of hours worked by men since the 1990 study has decreased by two hours per week, the hours worked by women have remained the same. More than half of all attorneys surveyed in 2004 worked between 40 and 54 hours per week.99 However, the percentage of women who work those hours has decreased since the 1990 study, when a larger majority, 60 percent of both men and women reported working between 40

94 Id.
95 Id.
96 Id.
97 Id.
98 In 2004, the average number of hours per week worked by women lawyers was 44 and the average for men lawyers was 45. Id. at page 16.
99 50.8 percent of women, 59 percent of men surveyed in 2004 work these hours. Id.
and 54 hours per week. Finally, the 2004 data shows that the same percentage (23%) of women and men attorneys report working over 55 hours per week. Thus, in the face of perceptions to the contrary, the data shows men and women lawyers work the same number of hours.

b. Part Time Working Schedules

With regard to the percentage of attorneys who work part-time hours, two points are clear. First, the number of attorneys working part time has increased since the 1990 study. Second, it is women who continue to use part-time schedules most frequently. While in 1990 15 percent of women and 8 percent of men worked part-time, in 2004 the numbers increased to 17.4 percent of women and 11.3 percent of men who reported working part-time hours. The majority of part-time attorneys were academics, solo practitioners or public interest attorneys.

The distribution of part-time lawyers by age group shows that almost half of the women are between the ages of 30 and 39 years old, while almost three quarters of male part-time attorneys are 50 years old or older. These numbers mean that women of childbearing age are working part-time hours while then men who are working part-time hours are of retirement age. It appears then that the women who work part time do so in order to fulfill family responsibilities while the men who work part time do so in preparation for retirement from the profession.

Finally, it is worth pointing out that even though the number of attorneys who work part-time hours has increased, part-time status does not always imply working fewer hours. A

---

100 Id.
101 Id.
102 See Gellis supra note 8 at 945.
103 See 2004 Indiana Report, supra note 14, at pages 9, 27.
104 Id. at page 9.
105 These numbers may also be affected by the fact that fewer women attorneys than men fall into the 50 and older age category. Almost half of female respondents of the 2004 survey were under 40 years of age. Id. at page 2.
phenomenon termed “schedule creep” has emerged, as described by a respondent where “people often say they are part time but continue to work 40+ hours/week.”

c. Perceptions of Working Hours

Although the number of hours worked by most men and women attorneys is similar, particularly for full-time attorneys- the data shows that over a quarter of male respondents perceive that female lawyers do not work as many hours as their male counterparts. When asked about their perceptions of the number of hours worked by female lawyers, 7.5 percent of women and 20 percent of men responded “fair or poor.” In contrast, half of all attorneys who responded chose “good” as their response. More than two thirds of women, however, believe that female attorneys work the same number of hours as male attorneys. Thus, there seems to be a gender disparity in the perceptions of hours worked by women attorneys. As one male respondent candidly wrote: “Most women do not ‘succeed’ in law because they don’t put in the hours. One has to plan on 50-90 hours per week.” Another respondent summarized the view that “Clients should not be forced to deal with “part time” and “reduced hours” lawyers and full time lawyers should not be forced to cover for “part time” and “reduced hours” lawyers. The practice of law in a private firm setting is a full time (2500+) hour job.”

d. Satisfaction: Hours Worked and Time for Self

An important part of the experience of attorneys in the legal profession can be assessed by looking at the level of satisfaction they report in the survey. Almost three quarters of the

107 See supra notes 98-99 and accompanying text.
108 Twenty seven percent of men believe that women do not perform as well in terms of number of hours worked as found in the 2004 survey. Id. at 21.
109 The numbers are similar to the response to the same question in 1990, where 7 percent of women and 26 percent of men chose “fair or poor.” Id. at 22.
110 Id.
111 Id. at 21.
112 Comment 564, Indiana 2004 Report supra note 14, at page 56.
respondents of both genders indicated satisfaction with the number of hours they worked and the amount of time they had for themselves.\textsuperscript{114} Despite this high number of satisfied lawyers, the survey showed an increase in the percentage of respondents who were dissatisfied or very dissatisfied with the number of hours they worked. From 15 percent of women and 10 percent of men in 1990 who were dissatisfied or very dissatisfied with their work hours, the percentage increased to 18.6 percent of women and 13.5 percent of men in 2004.\textsuperscript{115}

One male respondent remarked:

\begin{quote}
Unfortunately because of client demands (not court systems) it is a full time plus job and it is very difficult to do well, be progressive, and protect any personal time. I have hard enough time balancing work and family, I have no kids and a very supportive spouse. I don’t know how moms (and dads) with small children do it.\textsuperscript{116}
\end{quote}

3. Financial Compensation: Figures and Satisfaction

This is an area where the gap between men and women has been notable for years. The 1990 survey found that half of women lawyers earned less than $40,000 per year,\textsuperscript{117} while only one in five\textsuperscript{118} men lawyers did. By 2004, the numbers lowered so that 18.8 percent of women and 8.8 percent of men made less than $40,000 per year.\textsuperscript{119} Adjusting for the change in the value of the dollar,\textsuperscript{120} it is more accurate to compare the percentage of women and men who earned $40,000 in 1990 to those who earned under $59,000 per year in 2004. In 2004, 42.7 percent of

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{114}] The actual numbers are 70 percent of women and 72.6 percent of men. \textit{Id.} at 16.
\item[\textsuperscript{115}] See Gellis \textit{supra} note 8 at 947; \textit{see also} 2004 Indiana 2004 Survey Raw Data 4 (on file with author).
\item[\textsuperscript{116}] Comment 164, 2004 Indiana Report, \textit{supra} note 14, at page 50.
\item[\textsuperscript{117}] The exact figure is 53.1 percent. See 2004 Indiana Report, \textit{supra} note 14, at page 9.
\item[\textsuperscript{118}] The exact figure is 20.6 percent. \textit{Id.}
\item[\textsuperscript{119}] See 2004 Indiana Report, \textit{supra} note 14, at page 10, Figures 4a 1990 Salary Levels by Experience and Gender; 4b 2004 Salary Levels by Experience and Gender.
\end{itemize}
\end{footnotesize}
women and 22.1 percent of men earned $59,000 or less.\textsuperscript{121} The comparison of these numbers to those of the respondents who earned $40,000 or less in 1990 shows persistent salary gap between men and women lawyers.

This salary gap between women and men is even more apparent when controlled for number of years of experience. Male attorneys continue to receive larger financial compensation than women lawyers with the same level of experience. For example, almost three quarters\textsuperscript{122} of the women who have less than four years’ practice experience earn $60,000 or less, while only half of the men\textsuperscript{123} with the same amount of experience do so. Twice as many women than men who have between five and nine years of experience earn $60,000 or less.\textsuperscript{124} Finally, fifty percent of the women and 18 percent of the men with ten to fourteen years of experience earn $60,000 or less.\textsuperscript{125}

The lower compensation of women may be related to their higher representation in government work, a sector which pays less than private firms. Yet the salary gap persists when the state and local compensation numbers are examined. Twenty four percent of female attorneys and 11.3 percent of male attorneys work in state and local government.\textsuperscript{126} Of those, 22.2 percent of women and 11.4 percent of men earn less than $40,000 per year.\textsuperscript{127} Although the percentages show an improvement over the numbers from 1990- when 63 percent of women and 10 percent

\textsuperscript{121} 2004 Indiana Report, \textit{supra} note 14, at page 9.
\textsuperscript{122} The exact figure is 70.9 percent. \textit{Id.} at page 11.
\textsuperscript{123} The exact figure is 54.7 percent. \textit{Id.}
\textsuperscript{124} Forty-six percent of the women and 23 percent of the men are the actual percentages of the 2004 survey. \textit{Id.}
\textsuperscript{125} These percentages include the aggregate total of respondents, who full-time and part-time and in all types of legal employment. There are some variables that may have affected the outcomes, including the evidence that more women work part-time, see \textit{supra} notes 102-103 and accompanying text.
\textsuperscript{126} \textit{See} 2004 Indiana Report, \textit{supra} note 14, at page 7, Table 2: Type of Employment by Gender,
of men employed by state and local government earned less than $40,000128 - they still show pay
disparity by gender.

Other than the actual financial compensation percentages, the satisfaction of the respondents with their financial rewards is another important indicator to understand the experiences of those in the legal profession. Overall, the percentage of women and men who are satisfied with their financial rewards has increased. In fact, more than half of women and nearly two thirds of men reported being satisfied or very satisfied with their financial rewards,129 which is up from the 35 percent of women and 50 percent of men who were similarly satisfied in 1990.130

However, the percentage of respondents who were either dissatisfied or very dissatisfied with their financial rewards also increased for all attorneys, from 24.2 percent of women and 14.2 percent of men in 1990131 to 31.3 percent of women and 17.3 percent of men in 2004.132 While in 1990 the majority of women and men were optimistic about improvement in their financial rewards in the next five years, in 2004, the percentages declined to less than half of all attorneys.133 This decrease in optimism did not translate into widespread negativity, as only 22.5 percent of women and 17 percent of men reported being pessimistic about improvement in financial rewards in the next five years.134

The percentage of respondents reporting that inadequate compensation has been or will be an obstacle to their success increased slightly, and continued to show a gender disparity.

While in 1990 nearly half of women and slightly over a quarter of men reported that inadequate

128 See Gellis supra note 8 at 948.
129 The actual figures are 50.2 percent for women, 61.7 percent for men. See 2004 Indiana Report, supra note 14, at page 16.
131 Id.
133 The actual figures are 45 percent of women and 47.8 percent of men. See Gellis supra note 8 at 950.
134 See 2004 Indiana Report, supra note 14, at page 16.
compensation had been an obstacle to their success, the corresponding number in 2004 for women surpassed fifty percent of women and almost a third of men. Furthermore, for women attorneys, it appears that age is a factor in determining whether inadequate compensation had been an obstacle to success. In the 1990 survey, there were no statistically significant differences among female age groups in responses, while in 2004, nearly a third of the women who reported that insufficient compensation had been an obstacle to their success were in the 50 and older age category.

Because salaries and other forms of financial compensation are not ordinarily public information, perceptions of financial remuneration are valuable information in order to assess the status of women in the legal profession. When asked to compare themselves with other women attorneys, 37 percent of women reported that their salaries were worse. When asked to compare themselves to similarly situated male attorneys, in both 1990 and 2004, 30 percent of women indicated that their salaries were lower. Finally, nearly 40 percent of women responded that they had been victims of discrimination in pay, an increase from 31.7 percent of women who responded affirmatively to this query in 1990.

The perceptions of the male attorneys are also noteworthy: in 2004, 13 percent of men reported their belief of having higher salaries than women, which is a decrease from 20 percent.

---

135 The actual figures are 48 percent of women and 27.6 percent of men. See Gellis, supra note 8 at 950.
136 The actual figures are 51.2 percent of women and 29.3 percent of men in 2004. See 2004 Indiana Report, supra note 14, at page 16.
137 See 2004 Indiana Report, supra note 14, at pages 16-17.
138 Id.
139 Id. at 16.
140 Id. at 17.
141 See Gellis, supra note 8 at 950.
in 1990. Close to a third of women and over half of men reported having the same salary as the opposite sex.

E. The Work Place—Organizational Dynamics

Over 80 percent of lawyers are somewhat or very satisfied with their current employment, so overall they experience it positively. For Indiana women lawyers, since the 1990 study, most workplace organizational dynamics have either stayed consistent or experienced improvement. There is still room for improvement; for instance, to address the low numbers of female partners and the fact that their journey to partnerships tends to take longer; and finally, to document and eradicate the elevated levels of reported acts of discrimination.

1. Advancement

a. Partnership

A significant indicator of the advancement of women in the legal profession is their partnership rate at private law firms. The data shows that the percentage of female respondents who work in private law firms as partners has increased since the last survey. In 1990, nearly one in three of women respondents who worked in law firms were partners while more than two thirds of male respondents were partners. In the Indiana 2004 survey, 47.5% of all respondents were partners (21.6% female and 78.4% male). Despite the progress seen in the number of

---

142 See 2004 Indiana Report, supra note 14, at page 17.
143 See 2004 Indiana Report, supra note 14, at pages 16-17.
144 The actual figures are 84.3 percent of women and 88.2 percent of men. Id. at page 15.
145 See Gellis, supra note 8 at 945.
146 See email from James G. Wolf to María Pabón López, February 6, 2007. (on file with author). Additionally, there is data which indicates that of all women respondents employed at law firms, 42% identified as partners. Of all men employed at law firms, 72% also identified as partners. See 2004 Indiana Report, supra note 14, at page 8. Note that this last number seems abnormally high and inconsistent with the anecdotal experience at Indiana firms and with the figures that exist nationwide. See infra notes 304-309 and accompanying text. The Indiana Supreme Court has commissioned a new survey of law firms in Indiana to determine with precision how many women are partners. See email from James G. Wolf to María Pabón López, November 28, 2006. (on file with author). The 2004 survey did not have respondents make distinctions between equity and non equity partners.
women partners, the data showed that the number of years that women worked prior to partnership was longer in 2004 than 1990, and longer than for men.\footnote{See 2004 Indiana Report, supra note 14, at page 9, Figure 3 (Number of years in practice before being made partner).}

b. Satisfaction with Opportunities

The female respondents’ perceptions of the opportunities for advancement are evidence of some pessimism. A quarter of them indicated that they were either dissatisfied or very dissatisfied with their opportunities for advancement, a number that has not changed since 1990.\footnote{See id. at page 18.} When compared to their male colleagues, twice as many women perceived their opportunities for advancement as worse than similarly situated colleagues.\footnote{The numbers are 28 percent of women and 14.4 percent of men. See id.} Furthermore, over 30 percent of women perceived their opportunities for advancement as less than those of men, whereas only 6.4 percent of men perceived their opportunities for advancement as less than those of women.\footnote{See id.}

Additionally, almost 40 percent of women reported that inadequate opportunity for advancement had been an obstacle to their success, a response which was consistent with the numbers from the 1990 study.\footnote{See id. at page 19.} There was a small note of optimism when only a third of women respondents forecasted that inadequate opportunities for advancement would continue to be an obstacle to success, an improvement from the 40 percent of women who did so in 1990.\footnote{See id.} However, the numbers also showed that over one quarter of women reported being victims of discrimination in promotion.\footnote{The actual number is 27.1 percent. See id. at page 19.} This represents a slight increase from the 21 percent of women who reported such an experience in 1990.\footnote{See id. at page 18.} Finally, more than a third of women agreed that
they will never achieve equal status with men,\textsuperscript{155} a slight increase from the 30 percent who concurred in 1990.\textsuperscript{156}

Overall, the numbers on women lawyers’ perceptions of their advancement are somewhat dispiriting; it appears that although the number of women partners has increased, women lawyers do not appear to perceive that they are treated as equals. A comment by a female respondent about the challenges of being a female attorney is telling, yet offers hope:

It’s extremely difficult for a young woman in the legal field. Although I’ve worked extremely hard in my field and am as competent (or more competent) than many of my male counterparts, I often feel that people treat me as “some cute, young girl pretending to be a lawyer”. It’s frustrating—you’re always on-guard and proving how tough you are. Things are going to get better, because they’ve already come a long way.\textsuperscript{157}

The study contained questions regarding specific areas which relate to opportunities for advancement. Reviewing the responses to some of these questions may elucidate why women appear to think they are not treated as equals to their male counterparts. For example, twenty-four percent of women feel as though they receive less encouragement than men, as compared to 6.5 percent of men who feel as though they receive less encouragement than women.\textsuperscript{158} Twice as many women\textsuperscript{159} as men are dissatisfied with the feedback that they receive from their firm or organization.\textsuperscript{160} The percent of women who are dissatisfied with the feedback they receive has

\textsuperscript{155}See id.
\textsuperscript{156}See Gellis, supra note 8 at 951.
\textsuperscript{157}Comment 792, 2004 Indiana Report, supra note 14, at page 61.
\textsuperscript{158}See 2004 Indiana Report, supra note 14, at page 21.
\textsuperscript{159}This figure is almost a quarter of women (23 percent). See id.
\textsuperscript{160}The percent of men is 11.1. See id. at page 19.
not significantly improved since 1990.\footnote{The number is 25 percent. See id.} Furthermore, over forty percent of women feel that inadequate feedback is an obstacle to their career.\footnote{The figure is 41 percent. See id. at pages 19-20.}

The importance of feedback and the role that it plays in an attorney’s career path has been the subject of study and analysis, with findings as follows. “Feedback is both psychologically empowering for the individual, reinforcing motivation, and a necessary channel of communication from the firm. Individuals who receive no feedback believe they are being negatively evaluated.”\footnote{Cynthia Fuchs Epstein, Robert Saute, Bonnie Oglesky, & Martha Gever, Report, Glass Ceilings and Open Doors: Women’s Advancement in the Legal Profession, 64 FORDHAM L. REV. 291, 362 see also Lauren Stiller Rikleen, supra note 3 at 305 (noting importance of feedback in gender neutral evaluation process for attorneys).} It may be that the substantial number of women who report dissatisfaction with feedback also account for the considerable percentage of female respondents who are dissatisfied with their opportunities for advancement and for whom inadequate opportunities for advancement have been an obstacle to their success.

It is also likely that women who do not take part in the decision making at their firms may also account for the number of women who are dissatisfied with their opportunities for advancement. Thirty percent of women respondents indicate that they participate less in management decisions than similarly situated attorneys of the opposite gender, in contrast to the 4.8 percent of male respondents.\footnote{See 2004 Indiana Report, supra note 14, at page 20.} More than twice the amount of women than men are dissatisfied with the level of input they have in management decisions.\footnote{The figures are 24.3 percent of women and 10 percent of men. See id. at page 19}

c. Committee Memberships, Respect and Prestige

Membership on important committees at private law firms provides opportunities for associates to interact with partners who can assist them their career. While the survey did not require respondents to list the law firm committees on which they served, a trend seen in other
states finds men on committees that make decisions about the leadership of the firm while women serve on committees aimed at diversity or regarding associates.\textsuperscript{166} This phenomenon where women are absent in such important leadership committees as Compensation and Firm Governance has been termed a “second glass ceiling.”\textsuperscript{167}

Female lawyers appear disheartened by the level of respect that they receive at their firms. Regarding the level of respect shown to them by their superiors, twice as many women than men expressed dissatisfaction.\textsuperscript{168} Regarding the level of respect shown to them by colleagues and peers, more women than men are dissatisfied as well, but in much lower numbers.\textsuperscript{169} Nearly one in five women perceives that her situation is worse than similarly situated male lawyers.\textsuperscript{170} Regarding improvement in the areas of respect and prestige, twice as many women as men are pessimistic about this possibility.\textsuperscript{171} It should be noted that the percentages in this category of respect and prestige have changed by very few points since the study in 1990. This may imply that even if there has been some improvement in the respect and prestige women attorneys receive at work, they still perceive that they are afforded different treatment. Notwithstanding this possibility, a female respondent’s comment illustrates the view held by some women that they are not at a disadvantage in terms of respect:

It is my firm belief that the manner in which we are treated and the way we are perceived in our career and our personal life is


\textsuperscript{167} Rikleen, \textit{supra} note 3 at 33 (\textit{citing} ABA Commission Women in the Prof., EMPOWERMENT AND LEADERSHIP: TRIED AND TRUE METHODS FOR WOMEN LAWYERS 5 (2003)).

\textsuperscript{168} The figures are 15 percent of women and 7.2 percent of men. \textit{See} 2004 Indiana Report, \textit{supra} note 14, at page 20.

\textsuperscript{169} The figures are 7.4 percent of women and 2.3 percent of men. \textit{See id.}

\textsuperscript{170} \textit{See id.} at page 21.

\textsuperscript{171} The figures are 12 percent of women and 6 percent of men. \textit{Id.}
dependent upon the manner in which we conduct ourselves and the way we respond to the actions of others. I believe this to be true regardless of gender. We each need to accept personal responsibility for ourselves and not look to others to make our situation better. In my experience too many lawyers expect and demand respect when they have done nothing to deserve it.172

d. Women’s Commitment, Performance and Professional Relationships

When asked to compare male and female attorneys and rate the professional commitment of female lawyers in their organization, a substantial majority of respondents regards the professional commitment of female attorneys as the same as their male counterparts.173 This majority is virtually the same that responded to the same question in 1990.174 However, the respondents who do not fit in the majority hold some strong views, as seen in this comment by a male respondent:

I have been and am very supportive of women in law & give opportunities for them similar to men. However, it is hard and expensive because so often they are not the primary breadwinner & can decide they don’t like practice, want to do other things, etc. As a generalization their commitment to practice does not seem as great as men. They look for a job—not a career.175

172 Comment 627, 2004 Indiana Report, supra note 14, at page 58.
173 The figures are 69.2 percent of women and 76.2 percent of men. See id. at page 21.
174 The figures are 70 percent of women and 75 percent of men. See Gellis, supra note 8 at 953.
175 Comment 463, 2004 Indiana Report, supra note 14, at page 55.
Despite such views, when respondents were asked to rate the overall performance of female attorneys in their firm, two-thirds of the women and 42 percent of the men rated female attorneys’ overall performance as excellent.\textsuperscript{176}

Regarding their professional relationships, there was some improvement in how women rated themselves. Twice as many men than women reported that male lawyers are better than female lawyers at making contact with clients.\textsuperscript{177} This number improved since the 1990 study, when roughly the same number of men and women reported that male lawyers were better at contacting clients.\textsuperscript{178} There was also improvement in that the majority of men and women reported that the female lawyers were as successful as male lawyers in attracting new clients.\textsuperscript{179} However, one in four male attorneys and nearly one in three female attorneys still report that men do better at attracting new clients.\textsuperscript{180}

It is possible that women’s perceived disadvantage in attracting new clients, in common parlance, “rainmaking,”\textsuperscript{181} may be related to the fact that the majority of women do not have mentors. Only 40 percent of women report having mentors,\textsuperscript{182} a decrease from the 47 percent who did so in 1990.\textsuperscript{183} A leading scholar has analyzed the lack of mentoring for female lawyers and concluded:

\begin{quote}
The result is that many female lawyers remain out of the loop of career development. They aren’t adequately educated in their organization’s unstated practices and politics. They aren’t given enough challenging, highly visibility assignments. They aren’t
\end{quote}

\begin{flushleft}
\textsuperscript{176} See 2004 Indiana Report, \textit{supra} note 14, at page 22. \\
\textsuperscript{177} The figures are 13.7 percent of women and 27.4 percent of men. See id. \\
\textsuperscript{178} The figures are 32 percent of women and 39 percent of men. See Gellis, \textit{supra} note 8 at 953. \\
\textsuperscript{179} See 2004 Indiana Report, \textit{supra} note 14, at page 22. \\
\textsuperscript{180} The figures are 31.2 percent of women and 25 percent of men. See id. \\
\textsuperscript{181} Rikleen, \textit{supra} note 3 at 75. \\
\textsuperscript{182} See 2004 Indiana Report, \textit{supra} note 14, at page 22. \\
\textsuperscript{183} See Gellis, \textit{supra} note 8 at 951.
\end{flushleft}
included in social events that yield professional opportunities. And
they aren’t helped to acquire the legal and marketing skills that are
central to advancement.\textsuperscript{184}

Thus, an associate with a mentor most likely has access to clients that the associate would not otherwise have. One male respondent viewed the link between access and success as follows:

Success in the private practice of law is significantly \textsuperscript{[sic]} depends upon either attracting or maintaining business. The extent to which a law firm will allow a younger attorney access to clients, to enable the client’s trust and dependence on the younger attorney to grow, can determine success, respect, flexibility, and compensation (as fulfillment).\textsuperscript{185}

Finally, with regard to women lawyers’ access, the survey asked respondents to identify whether an “old boys’ network” exists. Nine out of every ten women\textsuperscript{186} responded that this type of informal network does exist, and an even larger number of them perceive that the “old boys’ network” helps male lawyers more than female lawyers. The passage of time has not changed these perceptions, as these numbers are the same as those from 1990.\textsuperscript{188}

Comments written by respondents addressing this topic clearly show the “old boys’ network” in action. A female respondent recounted an experience when a judge called her “little

\begin{flushright}
\end{flushright}

\begin{flushright}
\textsuperscript{185} Comment 176, 2004 Indiana Report, \textit{supra} note 14, at page 50.
\textsuperscript{186} The actual figure is 91%. \textit{See id.} at page 22.
\textsuperscript{187} The actual figure is 94.3%. \textit{See id; see also}, Comment 583, 2004 Indiana Report, \textit{supra} note 14, at page 57. (“The old boys network is alive and well but should look and listen at what they’ve been missing in excluding women from the practice of law.”)
\textsuperscript{188} See Gellis, \textit{supra} note 8 at 952.
\end{flushright}
missey” and asked if she would be arguing a motion, since she was accompanied by male intern who the judge mistook for an attorney. In another comment, a male respondent candidly summarized his experience:

I handle hundreds of requests for assistance from lawyers all over the state, year in and year out, from both male + [sic] female attorneys. From this experience, I definitely see an old boy network, I see all stereotypes played out. It varies from county to county, but there is definite bias + stereotyping against women, new lawyers, + lawyers from outside small counties.

2. Differing Perceptions of Women’s Experiences in the Legal Profession

The survey showed gender-based differing perceptions regarding particular aspects of women’s experience in the legal profession. In terms of competency, the majority of both women and men believe that female lawyers are as capable as male lawyers. However, the numbers still show a marked difference in perceptions sharply divided by gender. While eighty-three percent of women strongly agree that female lawyers are as capable as men, only 55 percent of men do so. While the women’s percentage has stayed the same as in 1990, the men’s percentage is a ten percent increase from the same response in 1990.

The data shows that almost twice as many male than female respondents believe that women receive favorable treatment because of their gender. In fact, several male respondents

---

189 See Comment 57, 2004 Indiana Report, supra note 14, at page 57.
190 Comment 84, 2004 Indiana Report, supra note 14, at page 48.
191 See 2004 Indiana Report, supra note 14, at page 23.
192 See id.
193 See Gellis, supra note 8 at 955.
194 The figures are 13.4 percent of women and 24.4 percent of men. See 2004 Indiana Report, supra note 14, at pages 26-7.
commented that the only group that faces discrimination is white males. 195 Reflecting on the past, the majority of respondents agreed that the women’s situation had improved since they began practicing law, with a noticeable distinction between genders. 196

When asked about their perceptions of the sexual discrimination encountered by women lawyers, a minority of male attorneys agreed that female attorneys encounter discrimination. The men who thought so were fewer in 2004 197 than in 1990. 198 In the meantime, a majority of women agreed that female attorneys encounter discrimination; this number has remained at around 72 percent. 199

The number of respondents who think that women make too much of sexual discrimination has decreased over time. Whereas 20 percent of women and 30 percent of men thought that women made too much of the issue in 1990, 200 the number dropped to 16.3 percent of women and 22 percent of men in 2004. 201 The comments of a female respondent are illustrative of this trend: “We need to get over it. The way has already been paved.” 202 Other survey comments from female and male respondents blamed sexual discrimination on women having a “victim’s mentality.” 203

However, the survey results show that large percentage of women report having experienced specific acts of discrimination. 204 The acts of discrimination surveyed included sexual harassment, discrimination in hiring, promotion, work assignments or pay, verbal abuse,

195 See e.g., Comment 734, 2004 Indiana Report, supra note 14, at page 61.
196 The figures are 55.3 percent of women and 73.4 of men. See 2004 Indiana Report, supra note 14, at page 27.
197 The figure stands at 32.9 percent in 2004. See id. at 26.
198 The actual number was 43.6 percent in 1990. See Gellis, supra note 8 at 956.
200 See Gellis, supra note 8 at 956.
201 See 2004 Indiana Report, supra note 14, at page 27.
202 Comment 120, 2004 Indiana Report, supra note 14, at page 49.
204 See 2004 Indiana Report, supra note 14, at page 24, Figure 11 (Acts of Discrimination Comparison Chart of Women Respondents).
and adverse rulings from a court or agency.\textsuperscript{205} The percentages of women lawyers experiencing these forms of discrimination is still high.\textsuperscript{206} There has been a ten percent increase of women who report experiencing discrimination in pay.\textsuperscript{207} Only one type of discrimination has seen improvement since 1990: physical sexual harassment. While 61.2 percent of women and 90 percent of men reported that they had never observed or experienced physical sexual harassment in 1990, 92.5 percent of women and 70.7 percent of men reported similarly in 2004.\textsuperscript{208} These numbers show the existence of gender-based discrimination in the legal profession, even when it is perceived that the situation has improved.

This state of affairs should not be surprising as: "[g]ender inequalities in the legal profession are pervasive; perceptions of inequalities are not. A widespread assumption is that barriers have been coming down, women have been moving up, and it is only a matter of time before full equality becomes an accomplished fact."\textsuperscript{209} This widespread but erroneous view, as evinced by the data collected in the Indiana survey, is an obstacle to the progress of women in the legal profession. It is unlikely that employers and others in the legal profession will take steps to eliminate a problem if they do not believe that the problem exists.

Employers/supervisors and opposing lawyers were those most often named by female respondents when asked who was responsible for the reported acts of discrimination.\textsuperscript{211} Some women commented on their experiences of discrimination at the hands of women or their view

\textsuperscript{205} Id.
\textsuperscript{206} Id.
\textsuperscript{207} See id.
\textsuperscript{208} See id.
\textsuperscript{209} Rhode, Unfinished Agenda, supra note 184 at 14.
\textsuperscript{210} The following comment from a female respondent is telling: “Female attorneys are so prevalent that gender issues fade over time.” Comment 731, 2004 Indiana Report, supra note 14, at page 61.
\textsuperscript{211} In fact, 67.7 percent of respondents named employers/supervisors and 40.6 percent named opposing lawyers. 2004 Indiana Report, supra note 14, at page 24. These numbers were the same in 1990, with employers/supervisors indicated as the source of harassment by 60 percent of women and opposing counsel similarly indicated by 53 percent of female respondents. See Gellis, supra note 8 at 954.
that discrimination continues only because of women. These comments are puzzling. The survey did not query the gender of responsible parties of the discriminatory acts; this in area where no analysis can be undertaken and further research is needed.

Finally, the survey asked respondents to identify the source of harassment, if harassment had been an obstacle to their success as lawyers. While there was a slight decrease from 1990 to 2004 in each source-which includes partners, judges, clients, fellow lawyers- the leading source of harassment was opposing counsel. It may be that, even if unethical, some lawyers have used harassment as a strategy when advocating for their clients.

3. Work/Family Balance

Because of women’s traditional role in family caregiving, an examination of whether there has been improvement in balancing work and family is crucial to assess the progress of women in the legal profession. The percentage of women respondents who were single in 2004 stood at 16.3 percent of women and 5.6 percent of men, whereas in 1990, the comparable numbers were 20 percent of women and 6 percent of men. While more women were divorced in 2004 than in 1990, the biggest change is that more women are having children while maintaining legal careers. While the percentage of male attorneys who are parents has not changed, there has been a ten percent increase in the percentage of women attorneys who are

---

212 See e.g., Comment 462, 2004 Indiana Report, supra note 14, at page 55.
213 See 2004 Indiana Report, supra note 14, at page 25, Figure 12 Comparison of Sources of Harassment by Group.
216 See Gellis, supra note 8 at 959.
217 The figures are 10.4 percent in 2004 and 8.3 percent in 1990. See 2004 Indiana Report, supra note 14, at page 28; see Gellis, supra note 8 at 959.
218 The numbers are 81 percent in 1990 and 80.4 percent in 2004. See Gellis, supra note 8 at 959; see 2004 Indiana Report, supra note 14, at page 28.
Furthermore, there has been a decrease in the percentage of women who have chosen not to have children because of their career and in those who delayed their careers in order to have children. 

Notwithstanding the above, there was very slight increase -from 36 percent in 1990 to 38.1 percent in 2004- in the percentage of women who delayed having children in order to advance their careers. It is hard to predict if this slight increase represents a trend; further research is warranted in this area. Scholars have suggested that women’s childbearing could account for the gap between the number of incoming female associates at private law firms and the number of female attorneys who achieve partnership and/or upper levels of management. Some have found that “[i]nterviews with women who were trying to raise children while pursuing their careers revealed a universal theme: their dual roles as lawyer and mother created enormous hurdles to their success in an environment that was unwilling to support their Herculean efforts to do both well.”

Most of the respondents who are married have partners who work outside of the home either full- or part-time. The vast majority of the women respondents indicated that they were

---

219 The numbers increased from 53 percent in 1990 to 62.8 percent in 2004. See Gellis, supra note 8 at 959; see 2004 Indiana Report, supra note 14, at page 28.
220 The numbers decreased from 15 percent in 1990 to 8 percent in 2004. See Gellis, supra note 8 at 959; see 2004 Indiana Report, supra note 14, at page 28.
221 The numbers decreased from 30 percent in 1990 to 13 percent in 2004. See Gellis, supra note 8 at 959; see 2004 Indiana Report, supra note 14, at page 28.
222 See Gellis, supra note 8 at 959; see 2004 Indiana Report, supra note 14, at page 28.
224 Rikleen, supra note 3 at 116.
225 The numbers are 66.7 percent of women and 67 percent of men. See 2004 Indiana Report, supra note 14, at page 28.
responsible for fifty percent or more of their family responsibilities. Women also significantly outnumber men in taking care of seventy-five to one hundred percent of the family responsibilities. Finally, the percentage of women who reported that their partners shared in less than half of the family responsibilities increased very slightly. This is another area where further research will be needed to determine if this is an emerging trend. Regarding the realities of work/family balance for women attorneys, a male respondent commented:

It is absolutely impossible for a woman attorney to have a career comparable to a man as an attorney e.g. in a litigation law firm + for her to do as well as men do, being wife/mother +/- full-time lawyer. Don’t get me wrong, it’s possible to do all three, but to raise children too, there must be an extremely cooperative spouse i.e. Mr. Mom; or other concessions made, for all to succeed + for her to do all three “WELL” or even reasonably WELL in the long term. That is” [sic] something will have to suffer for such a female atty to reach comparable career levels: either marriage stress; or kids take the BRUNT of being short-changed; or a Dad who cooks/cleans/does homework and drives.

Parent-lawyers try to balance the demands of their careers with their family responsibilities by working part-time or flexible schedules. It appears that the legal workplace has found the use of such schedules to be useful, since the survey found that part time schedules

226 The number is 94.2 percent. Id. at page 28-9.
227 The figures are 28.3 percent of women and only 2.7 percent of men. Id. at page 28.
228 The numbers increased from 60 percent in 1990 to 62 percent in 2004. Gellis, supra note 8 at 959; see 2004 Indiana Report, supra note 14, at page 28.
are available in the majority of legal work environments.\textsuperscript{230} This substantially increased availability of part time work is very different from the situation in 1990, when the majority of respondents reported the unavailability of part-time employment.\textsuperscript{231}

Despite the increased availability of part time opportunities, the 2004 survey revealed an increase in the percentage of both female and male respondents reporting that lack of part-time employment had been an obstacle their success. Whereas for 36 percent of women and 10 percent of men the absence of part-time work was an obstacle in 1990, by 2004 the numbers increased to 43 percent of women and 11.6 percent of men.\textsuperscript{232} The fact that more respondents have children could account for increase in these percentages.

Also despite the improvement in the availability of part time work schedules, the fact that 43.6 percent of women and 12.4 percent of men expressed concern that the lack of part-time schedules will continue to be an obstacle in the future shows some pessimism.\textsuperscript{233} The pessimism may be tied to the billable hour requirement used at most private law firms. As one of the respondents commented: “Women with young children have a very difficult time practicing law in a firm due to billable hour requirements interfering with family responsibilities. It is no wonder why so many women leave private ‘firm’ practice before ever reaching ‘partner’ level.”\textsuperscript{234}

The effectiveness of the billable-hour model and the question of whether this model continues to be successful at evaluating performance has been the object of considerable study

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{230}] In 2004, 54.5 percent of women and 49.2 percent of men reported that the organization that they work for offered some type of part-time employment. 2004 Indiana Report, supra note 14, at page 61.
\item[\textsuperscript{231}] See Gellis, supra note 8 at 959.
\item[\textsuperscript{232}] See Gellis, supra note 8 at 958; see also 2004 Indiana Report, supra note 14, at page 27.
\item[\textsuperscript{233}] See id.
\item[\textsuperscript{234}] Comment 96, 2004 Indiana Report, supra note 14, at page 48.
\end{itemize}
\end{footnotesize}
and is beyond the scope of this article. Yet, even if the billable-hour requirement of the 
private law firms is squared with part-time scheduling, negative perceptions of part-time work 
still remain. Respondents wrote in comments expressing clear views for and against part-time 
scheduling. Some of the comments voiced support for part-time scheduling and some 
contained personal accounts of how part-time scheduling accommodated their families’ needs. However, there were some pointed comments about the unfairness of having clients and full-time 
lawyers work alongside with part-time lawyers. Some other comments suggested that the 
availability of part time is a purely female problem while others praised hardworking female 
associates who “do not take advantage of leave or part time status.” Yet there have been recent 
reports and research suggesting that these issues are not “women’s work,” i.e., both women and 
men lawyers want a balanced lifestyle, one which includes family. Despite these views, one 
respondent succinctly observed that: “In my opinion, most law offices and legal communities 
exhibit near gender equality. However, most legal employers and the practice of law itself is 
NOT family friendly.”

One family friendly adjustment that a large number of organizations have made is the 
availability of maternity leave. A large majority of the workplaces where the respondents worked 
offer some type of maternity leave. This development stands in contrast to 1990, when a

---

237 See e.g. Comment 641, 2004 Indiana Report, supra note 14, at page 59.
239 Comment 293, 2004 Indiana Report, supra note 14, at page 52.
242 The number is eighty-eight percent. 2004 Indiana Report, supra note 14, at page 29.
minority of legal organizations offered informal maternity leave.\textsuperscript{243} It may be that this change is responsive to the enactment of the Family Medical Leave Act ("FMLA") two years after the first survey.\textsuperscript{244}

While most organizations offer family leave for mothers, only a quarter of organizations offer paternity leave.\textsuperscript{245} It is this type of inequity which furthers the stereotypes about the roles that women have played in the past. This is the case even as women try to achieve equality in the workplace. In seeking work/family balance, men have obstacles:

[M]ales get far less leeway than women to parent. Although mothers who play active childcare roles have a place in the workforce, there is little opportunity for men who want to do the same. The role of father is even more rigidly defined than that of mother, still seen overwhelmingly by men and women as being the breadwinner.\textsuperscript{246}

Finally, for parent-attorneys, the availability of day care is a cause for concern, mostly for females. Thirty percent of the women and 6.3 percent of men reported that day care facility concerns were an obstacle to their success.\textsuperscript{247} Furthermore, respondents of both genders found that family demands had impeded their career success.\textsuperscript{248} And a majority of women respondents predicted that family demands would continue to be an obstacle their success.\textsuperscript{249} A comment from a male respondent offered advice to attorneys having trouble balancing work and family demands:

\begin{itemize}
  \item \textsuperscript{243} See Gellis, supra note 8 at 960.
  \item \textsuperscript{244} 29 U.S.C.A § 2612 (1993). The FMLA allows eligible employees of certain employers to take up to twelve weeks of leave for the birth or adoption of a child.
  \item \textsuperscript{245} See 2004 Indiana Report, supra note 14, at page 29.
  \item \textsuperscript{246} English, supra note 223 at 238.
  \item \textsuperscript{247} See 2004 Indiana Report, supra note 14, at page 28.
  \item \textsuperscript{248} The numbers are 50.6 percent of women and 31.9 percent of men. Id. at page 27.
  \item \textsuperscript{249} The number is 51.8 percent. Id.
\end{itemize}
Balancing work and family is not difficult but you must be willing to prioritize and place family first when required. Too often people say they balance family and work however often I believe people put careers first. It is a balance that I believe makes one a better lawyer and better supervisor.  

4. Satisfaction

A large majority of the Indiana attorney respondents indicated that they are satisfied with their current legal employment. While more men are satisfied or very satisfied with most areas of their careers, women are also satisfied or very satisfied in a sizable percentage. The three work aspects in which most women reported satisfaction are intellectual challenge, level of responsibility, and respect received at their place of employment. Men found satisfaction in the same aspects of their employment, except that respect received is their top source of satisfaction and it is the third ranked for the women. Career satisfaction comments written in by the respondents were varied. Several comments from respondents of both genders indicated disappointment with their careers in law and regret for going into the field. Yet other comments, mostly from men, indicated how much affection they have for the profession. In sum, when 8 out of every ten attorneys-both men and women-indicated their satisfaction, it is clear that women attorneys in Indiana are also fond of the profession.

IV. Indiana’s Findings Compared to National and Other States’ Findings

252 Id. at page 16.
253 Id.
254 Id.
255 See e.g., Comment 326, 2004 Indiana Report, supra note 14, at page 52 (“This profession is a miserable way to make a living.”); Comment 892, 2004 Indiana Report, supra note 14, at page 63 (“I am miserably disillusioned.”)
256 See e.g., Comment 497, 2004 Indiana Report, supra note 14, at page 55 (“I consider myself one of the most fortunate of people.”); Comment 119, 2004 Indiana Report, supra note 14, at page 48 (“I think that Indianapolis and or Indiana is a great place to live and work as a lawyer.”)
Because the status of women in the legal profession is a concern nationwide, other jurisdictions, such as Colorado,\(^{257}\) Maryland,\(^{258}\) New Hampshire,\(^{259}\) New York,\(^{260}\) Texas,\(^{261}\) and Washington have undertaken studies on the topic.\(^{262}\) One federal court of appeals has studied the issue as well.\(^{263}\) They have issued reports akin to the 2004 Indiana Bar Report. Several have formed task forces to study gender equality in the courtroom.\(^{264}\) These task forces have also examined other areas regarding women in the law. These include bias in certain areas of law practice, such as domestic violence and family law; the treatment of women in the courts, including litigants and witnesses; as well as the treatment of women personnel in court administration.


At the national level, different organizations have collected and studied country wide statistics regarding women in the legal profession. A comparison of the data collected in Indiana with that of these other states as well as the national statistics should give a contextualized picture of how women lawyers fare in Indiana and what the trends are emerging for women lawyers throughout the country.

Among the trends that this Part discusses in more detail include the demographic rise of women attorneys without a concomitant rise in leadership positions within the profession, the gender based salary gap, the ever present work and family balance concerns, and the disquieting perceptions of women attorneys in the workplace.

### A. Demographics

The evaluation of the data from Indiana as compared to the other jurisdictions and national data show remarkable similarity in the numbers. Of the 1,104,766 attorneys nationwide, 30.2 percent of them are women. In Indiana, 31 percent of the bar is comprised of female attorneys.

Although women comprise about half of those receiving law degrees in the country, the fact is that overall they are younger and less experienced than male lawyers. In Indiana, twice as many women as men were under the age of forty. In New York, two thirds of women

---


268 See supra note 59 and accompanying text.


270 The actual numbers are 49.4 percent of women and 26.4 percent of men. 2004 Indiana Report, supra note 14, at page 5.
lawyers and only one third of men attorneys are 44 or younger.\textsuperscript{271} In Texas, the median age of attorneys is 41 for women and 48 for men.\textsuperscript{272} Texas is nearly the same as Indiana, where the median ages are for women 40 and for men 49.\textsuperscript{273} Similarly, in Colorado the average female attorney is 41 years old and has 10 years of practice experience.\textsuperscript{274} The practice experience that an average female attorney has in other states is comparable: in Texas it is 11 years\textsuperscript{275} and in New York, it is 12.5 years.\textsuperscript{276} Similarly, we see a trend in that more than half of the female attorneys in Indiana have 14 years or less of experience.\textsuperscript{277}

B. Employment Figures: Examination of Key Aspects

\hspace{1em}1. Types of Employment and Hours

The national data shows that the distribution of female attorneys in the most predominant types of legal employment is overall similar to that found in Indiana. As is the case nationwide,\textsuperscript{278} the majority of women in Indiana are in private practice.\textsuperscript{279}

The differences emerge when looking at certain areas of practice outside of private practice. More Indiana women lawyers work in the government\textsuperscript{280} and the legal academy\textsuperscript{281} than

\textsuperscript{271} Actual figures are 60 percent of the women and 35 percent of the men. New York Bar Report, supra note __, at 6-7.
\textsuperscript{272} Texas Bar Report, supra note 261 at 9.
\textsuperscript{273} Interview with Susan Jacobs, Associate Executive Director, Indiana State Bar Association, June 2005 (on file with author).
\textsuperscript{274} Colorado Bar Report, supra note 257, at 5.
\textsuperscript{275} Texas Bar Report, supra note 261, at 9.
\textsuperscript{276} New York Bar Report, supra note 260, at 14.
\textsuperscript{277} The number is sixty-five percent. 2004 Indiana Report, supra note 14, at page 6.
\textsuperscript{278} The national data shows that 56 percent of recently graduated female attorneys work in private practice. ABA Women at a Glance, supra note 266 at 2. Other nationwide surveys have put this figure at a higher 70%. See ABA Facts About Women and the Law, available at \url{http://www.abanet.org/media/factbooks/womenlaw.pdf} at 4.
\textsuperscript{279} In Indiana, the comparable number was 54 percent. 2004 Indiana Report, supra note 14, at page 7. This figure includes solo practice. \textit{Id.}
\textsuperscript{280} Over a quarter (26.8 percent) of the women attorneys in Indiana work for the government. \textit{Id.} This is more than twice the 11.9 percent found in data provided by the ABA. ABA Women at a Glance, supra note 266 at 2.
\textsuperscript{281} The number of Indiana’s women in academic legal employment is 4 percent. See 2004 Indiana Report, supra note 14, at page 7. This number is more than double the national average of 1.7 percent. See ABA Women at a Glance, supra note 266 at page 2.
their counterparts among the nation. On the other hand, fewer Indiana women lawyers work in the corporate\textsuperscript{282} sector and in public interest\textsuperscript{283} as compared to the national data.

Regarding the number of hours per week that attorneys are expected to work, the data shows that Indiana is on par with national figures. While a nationwide survey found that a typical median attorney work week was 50 hours,\textsuperscript{284} Indiana’s median work hours were 44 for women and 45 for men.\textsuperscript{285} In fact, in Indiana, 50.8 percent of women and 59 percent of men actually worked between 40 and 54 hours per week.\textsuperscript{286}

As with other jurisdictions, more women than men work part-time hours in Indiana. Nationwide, the data indicates that one third of female attorneys and one in ten male attorneys have worked part-time.\textsuperscript{287} In Indiana, the data shows that 17.4 percent of women and 11.3 percent of men work part-time.\textsuperscript{288} In Colorado, the comparable data is that 18 percent of female private practitioners and 13 percent of male private practitioners work part-time.\textsuperscript{289}

In terms of lawyers’ satisfaction, Indiana fares better than the nationwide average. The number of lawyers dissatisfied with the amount of time they have to themselves is half the number nationally,\textsuperscript{290} where 70 percent of both men and women report having difficulty balancing the demands of work with their personal lives.\textsuperscript{291} For example, in New York, half of

\textsuperscript{282}Indiana has fewer women working as corporate counsel. See 2004 Indiana Report, \textit{supra} note 14, at page 7. While in Indiana the number is 7 percent, the national figure is 10 percent. See ABA Women at a Glance, \textit{supra} note 266 at page 3. The national figure for women general counsel is 15.4 \%. \textit{Id.}

\textsuperscript{283}The number of women employed in public interest in Indiana is 4.8 percent. The comparable national figure is 6.1 \%. See ABA Women at a Glance, \textit{supra} note 266 at page 2.

\textsuperscript{284}The NALP Foundation and the American Bar Foundation, \textit{After the JD: First Results of a National Study of Legal Careers}, at 33, available at \url{http://www.nalpfoundation.org/webmodules/articles/articlefiles/87-After_JD_2004_web.pdf} (2004) [hereinafter “After the JD”].

\textsuperscript{285}See 2004 Indiana Report, \textit{supra} note 14, at page 16.

\textsuperscript{286}\textit{Id.}

\textsuperscript{287}Catalyst, \textit{supra} note 265, at 19. The actual data is 34\% women and 9\% men. \textit{Id.}

\textsuperscript{288}2004 Indiana Report, \textit{supra} note 14, at page 9.

\textsuperscript{289}Colorado Bar Report, \textit{supra} note 257, at 7.

\textsuperscript{290}The actual figures are 35.6 percent of women and 22.8 percent of men. 2004 Indiana Report, \textit{supra} note 14, at page 15.

\textsuperscript{291}Catalyst, \textit{supra} note 265, at 40.
the women lawyers and 4 out of every 10 men attorneys report that they do not allocate enough
time to their personal lives.292 These numbers show that Indiana attorneys appear to have an
advantage with regard to balancing work and life over their counterparts in other parts of the
country.

2. Financial Compensation: Figures and Perceptions

It is not aberrational that the survey found pay disparity between men and women
lawyers in Indiana. This is a nationwide phenomenon that has been widely identified by task
forces and scholars alike.293 Since Indiana salaries are below national norms, female attorneys in
the state earn less than their male counterparts, and less than the average woman lawyer
throughout the country. While slightly over half the male attorneys with five years or less
experience in Indiana made under $60,000 per year, over three quarters of the female attorneys
with the same experience had similar earnings.294 By comparison, national studies found that the
median weekly income of female attorneys in 2004 was 73.4 percent of the income earned by
male attorneys.295

While it may appear that this gender based salary disparity trend may be tied to the
younger female lawyers in the workforce, the numbers belie this view. A study of recently
admitted lawyers nationwide found the median annual salary for women to be $66,000 and

293 A recent survey found that at the following levels of legal practice- equity partner, non-equity partner and of
counsel- women are compensated well below men. National Association of Women Lawyers, 2006 REPORT:
NAWL’S FIRST NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS 8, available at
http://www.abanet.org/nawl/docs/NAWIFINALPUBLICATION10-25-06SURVEYREPORT.pdf ; see also, Mary C.
Noonan and Mary E. Corcoran, The Mommy Track and Partnership: Temporary Delay or Dead End?, 596 ANNALS
AM. ACAD. POL. & SOC. SCI. 130, 146 (2004).(noting that women partners earn 32% less than similarly situated
male partners.)
294 The figures are 60 of the men and 78 of the women. 2004 Indiana Report, supra note 14, at page 10; Figure 4b
2004 Salary Levels by Experience and Gender.
295 See United States Department of Labor, Bureau of Labor Statistics, Median Usual Weekly Earnings of Full-Time
Wage and Salary Workers by Detailed Occupation and Sex, 2004 Annual Averages, http://www.bls.gov/cps/wlf-
table18-2005.pdf ( indicating that the weekly median salary for female attorneys was $1,255 and for male attorneys
was $1,710).
$80,000 for men in 2004.\(^{296}\) For young lawyers, defined as those who have been admitted to practice in their first bar within the past five years or who are less than 36 years old, the median salary nationally for female attorneys in 2000 was $20,000 less than for their male counterparts.\(^{297}\)

Other states have found similar pay disparities between men and women in the legal profession. In Washington, men comprise 77 percent of all lawyers receiving the top 25 percent monetary compensation at law firms.\(^{298}\) A 2002 study of Michigan attorneys found that the median income for female attorneys was $27,000 lower than the median income of male attorneys.\(^{299}\)

The low salaries seen above translate, understandably, into reduced satisfaction with their financial rewards. While the majority of Indiana lawyers indicated that they were satisfied or very satisfied with their financial rewards,\(^{300}\) the numbers are lower than in New York, where a larger majority are somewhat or very satisfied with the financial remuneration for the work they do.\(^{301}\)

Finally, it is worth noting that Indiana female lawyers are more concentrated in places of employment where the pay is lowest, for example, state and local government.\(^{302}\) The large percent of those making $20,000 to $40,000 a year in such low paid legal employment is

\(^{296}\) After the JD, supra note 284 at 60.
\(^{297}\) ABA Young Lawyers Division Career Satisfaction 2000 Survey, http://www.abanet.org/yld/satisfaction_800.doc (2000) [hereinafter “ABA YLD Survey”] The actual median salaries were $50,000 to $59,999 for women attorneys and for male attorneys it was $70,000 to $79,999. Id.
\(^{298}\) Washington SAGE Report, supra note 262, at 9, 24.
\(^{299}\) Eric Freedman, Pay Gap Narrows for Black Lawyers, Remains Wide for Women, Capital New Service (Dec. 5, 2003), available at http://www.cns.jrn.msu.edu/articles/2003_1205/LAWYERS.html. The median salary for male attorneys was $92,000 while for women attorneys it was $65,000. Id.
\(^{300}\) The numbers are 50.2 percent of women and 61.7 percent of men. 2004 Indiana Report, supra note 14, at page 16.
\(^{301}\) New York Bar Report, supra note 260, at 33. The actual figures are 65 percent of female attorneys and 73 percent of male attorneys. Id.
\(^{302}\) See supra notes 77 and 78 and accompanying text.
startling in comparison to those making a similar figure in private law practice. Thus, it is evident that financial compensation is one area where concerted efforts are necessary to bring the genders in the legal workplace towards full equality.

C. The Work Place—Organizational Dynamics

1. Advancement

   a. Partnership

   As noted above, there are more women in law school and entering the legal profession than ever before. The expectation would be that this “new order” would yield similar higher numbers of women in positions of authority and experience throughout all the practice areas in the legal profession. Yet, by and large, this is not the case. At private law firms, women lawyers are not reaching the upper levels of law firm management, as evidenced by their partnership numbers. In Indiana, less than half of the 2004 survey respondents indicated that they were partners at firms and of those, 21.6 percent were female. Moreover, a 2002 survey found that of the total 308 partners at private law firms in the city of Indianapolis, only 17 percent are women. This trend of the low numbers of women partners is apparent not only in Indiana, but nationwide.

   Nationwide data shows that 17.1 percent of partners in private law firms are women.

The American Bar Association, in studying this phenomenon, has found that “the most pervasive

---

303 The numbers are 43% of women lawyers versus 6% of men attorneys who earn these amounts. 2004 Indiana Report, supra note 14, at page 11.
304 See supra notes 3 and 4 and accompanying text.
305 See National Association of Women Lawyers, 2006 REPORT, supra note 293 at 1 (stating that most recent nationwide survey shows that women are best represented in junior equity partnership, where they are at 1 in 4, compared to 1 out of 6 equity partners. See also UNITED STATES EQUAL OPPORTUNITY EMPLOYMENT OPPORTUNITY COMMISSION, DIVERSITY IN LAW FIRMS, at 10 (2003) (Noting that employment of women at large law firms has not kept pace with law degrees obtained by women or the employment of women attorneys in the general work force.)
306 The respondents who identified as partners comprised 47.5 percent of the respondents. Email from James Wolf to María Pabón López, February 6, 2007. (on file with author) See supra note 146 and accompanying text.
308 ABA Women at a Glance, supra note 266 at 2.
underrepresentation of female lawyers . . . exist[s] among partners in law firms [, since] only . . . 60 percent as many female lawyers were partners in law firms . . . as would have been expected had women been fully represented among partners.”

A recent survey of University of Michigan Law School graduates confirms that women are less likely than men to be promoted to partner, even when controlling for key factors such as GPA, race, years of law practice, marital status, children, mentorship, and satisfaction. The results are strikingly similar in other states. A survey in Washington showed that while female associates comprised nearly half of the associates at private law firms, female equity partners comprised only one fifth percent of the equity partners.

b. Opportunities for Advancement

With this backdrop, it is not unexpected to find that women lawyers generally are less satisfied with their opportunities for advancement than their male counterparts. One quarter of the female respondents to the 2004 Indiana study reported dissatisfaction with their opportunities for advancement. This translates into approximately a 75% satisfaction rate among Indiana female attorney respondents in their opportunities for advancement. This rate is akin to the experience in New York, where over three quarters of women attorneys indicated that there has been adequate potential for advancement/professional development in their careers. Both Indiana and New York stand in stark contrast to nationwide figures. Nationally, the figures for attorney dissatisfaction with their opportunities for advancement show that 59 percent of white

---

309 Rhode, Unfinished Agenda, supra note 184, at 23 (quoting Kathleen E. Hull and Robert Nelson, Divergent Paths: Gender Differences in the Careers of Urban Lawyers, 10 RESEARCHING LAW 1, 14 (1999)).
310 Noonan and Corcoran, supra note 293 at 140.
311 The female associates were 47 percent while the equity partners were 19 percent. Washington SAGE Report, supra note 262, at 18.
312 2004 Indiana Report, supra note 14, at 18.
313 New York Bar Report, supra note 260, at 33. The actual figure was 77% of women attorneys. Id.
women attorneys and 70 percent of women minority attorneys are dissatisfied with their opportunities for advancement, compared to 49% of white male attorneys.\textsuperscript{314}

c. Feedback

Such differentiation by gender is also apparent in Indiana with regard to attorneys who are dissatisfied with feedback given to them from their firms, where the percentage of female attorneys dissatisfied with the feedback from their firms is twice that of male attorneys.\textsuperscript{315} While not as stark a difference as in Indiana, nearly twenty percent more male lawyers than female lawyers reported that assistance with professional development is actively provided by their place of employment in New York.\textsuperscript{316}

d. Input into Management Decisions

Indiana women lawyers are also on par with the other women lawyers across the nation in terms of their input into management decisions, where nearly one quarter of female attorneys and one in every ten male attorneys report dissatisfaction.\textsuperscript{317} Research on women lawyers serving on key law firm committees in Colorado revealed their experiences of being excluded from firm decision-making processes.\textsuperscript{318} For example, respondents described occasions when they would attend meetings to discuss particular matters and find upon their arrival that the matters had been resolved “without their input or consultation.”\textsuperscript{319}

e. Respect

\begin{footnotes}
\item[314] Catalyst, \textit{supra} note 265, at 14-15.
\item[315] 2004 Indiana Report, \textit{supra} note 14, at 19. The actual figures are 23 percent of women and 11.1 percent of men. \textit{Id.}
\item[316] New York Bar Report, \textit{supra} note 260, at 39. The actual figures are 41 percent of female attorneys and 58 percent of male attorneys. \textit{Id.}
\item[317] 2004 Indiana Report \textit{supra} note 14, at 19. The actual figures are 24.3 percent of women lawyers and 10 percent of men lawyers. \textit{Id.}
\item[318] Reichman and Sterling, \textit{Gender Penalties, supra} note 257, at 44-45.
\item[319] \textit{Id.} at 44.
\end{footnotes}
On a related note, women lawyers are dissatisfied with the respect and treatment they are afforded at the firms. In Indiana, 15 percent of women expressed dissatisfaction with the respect shown to them by superiors and nearly 20 percent indicated that their situation regarding respect was worse than their male counterparts. In New York, over half of the women attorneys and a third of the male attorneys believed that female attorneys are accorded less respect than male attorneys. When asked if female attorneys receive condescending treatment by male attorneys, 13.8 percent of women attorneys from Indiana and 70 percent of the women in New York agreed. Close to 12 percent of female attorneys in Indiana and 64 percent of women from New York indicated that they had experienced or witnessed female lawyers receiving less respect than male lawyers. Similarly, in New Hampshire, two thirds of attorneys believe that gender has the most significant impact on how other attorneys treat each other and how they are treated at their law firms. These findings show a trend where women attorneys experience differential treatment as legal professionals based on their gender.

f. Perceptions

Another area where women lawyers experience differential treatment is in the perception of their professional commitment and performance. Scholars have identified the causes for this phenomenon and commented as follows: “Women’s ‘commitment’ to law is questioned because they reject or cannot create the impression of open-ended availability. Women with families are assumed less committed to the practice of law because they have other responsibilities in a

321 New York Bar Report, supra note 260, at 31. The figures are 64 percent of women and 34 percent of men. Id.
gendered world, even when there is no empirical evidence to support that assumption.” 327 Recent Indiana data demonstrates this phenomenon. While approximately three quarters of the attorney respondents in the Indiana 2004 survey believe that female lawyers have the same level of professional commitment as male lawyers, 328 nearly 20 percent of male attorneys believe that men have a higher sense of professional commitment. 329

Similar views appear in New York, where almost half of the female attorneys and nearly one in ten of the male attorneys expressed the view that in order to achieve the same results, female attorneys have to work harder than male attorneys. 330 These results are evidence that, as researchers have found, “the status of women has been downgraded over the past generation because of perceived lack of commitment to their careers . . . In the law, competence is powerfully linked to dedication.” 331

The difference in perception is evident in the ways in which the overall performance of female attorneys in Indiana is assessed. Women attorneys were rated as excellent in their overall performance by two-thirds of women and nearly half of the men attorneys. 332 These views may be the result of women’s performance being held to heightened examination. Scholars have found that “[i]n large national surveys, between half and three-quarters of female attorneys believe that they are held to higher standards than their male counterparts or have to work harder for the same results.” 333 For example, in New York, one quarter of women attorneys and only 4

327 Reichman and Sterling, Gender Penalties, supra note 257, at 50-51.
328 2004 Indiana Report supra note 14, at 21. The actual figures are 69.2 percent of women and 76.2 percent of men.
Id. 329 2004 Indiana Report supra note 14, at 21.
330 New York Bar Report, supra note 260, at 27. The actual figures are 44 percent of women and 9 percent of men.
Id.
331 English, supra note 223 at 89.
in 10 men attorneys indicated their view that the work of female lawyers is more scrutinized.\textsuperscript{334} Thus, this is yet another area in which women experience disparity in their experiences as legal professionals and which needs to be further analyzed.

g. Client Relationships

Another aspect of the experience of women lawyers is related to bringing in new business either by cultivating existing clients or by attracting new clients (“rainmaking”). While a 1995 study concluded that “women are disadvantaged in their ability to bring in business because they possess fewer contacts than men, have less time to devote to client development, and are not part of the networks in which business is generated,”\textsuperscript{335} this view no longer appears to be validated by the recent data. For example, a majority of both men and women lawyer respondents in Indiana believe that women are as successful as men in making contact with current clients and attracting new clients.\textsuperscript{336} Yet twice as many men as women respondents believe that men are better at making contacts with current clients\textsuperscript{337} and more women than men believe that men are better at attracting new clients.\textsuperscript{338}

While the perception women lawyers’ ability to generate business has improved, actual access to clients is critical in order to create opportunities for advancement: Attracting new business inevitably entails access to the clients. Data from New York shows that a large majority of attorneys view the opportunities for direct client contact as being equal for lawyers of both genders.\textsuperscript{339} However, three times as many women as men attorneys believed that female lawyers

\textsuperscript{334} New York Bar Report, supra note 46 at 27. The actual figures are 25 percent of women and 4 percent of men. Id.
\textsuperscript{335} Epstein, supra note 163, at 302-03.
\textsuperscript{336} 2004 Indiana Report supra note 14, at 22.
\textsuperscript{337} Id. The actual figures are 13.7 percent of women respondents and 27.4 percent of men respondents. Id.
\textsuperscript{338} Id. The actual figures are 31.2 percent of women and 25 percent of men. Id.
\textsuperscript{339} New York Bar Report, supra note 260, at 28. The actual figures are 85 percent of female attorneys and 97 percent of male attorneys. Id.
had difficulty getting access to important clients because of the prejudicial attitudes of male managers.\textsuperscript{340}

h. Mentoring

Senior attorneys who take an interest in associates who are making their way through the firm hierarchy may provide such access in the form of a mentoring relationship. Within the law firm experience, “there has been a long tradition of mentoring, where older, more experienced partners in large firms have taken junior colleagues under their wings, grooming and promoting them for partnership.”\textsuperscript{341} Thus, mentoring is a key component to an attorney’s advancement in a law firm environment.

While mentoring is generally available\textsuperscript{342} to men and women, it is not equally accessible across gender and ethnicity. The available data shows that nationwide, less than half of white attorneys of both genders and nearly one third percent of female minority attorneys are extremely or very satisfied with the availability of mentors.\textsuperscript{343} The data in Indiana shows that more women than men report having mentors.\textsuperscript{344} It is possible that fewer men in Indiana have mentors because they rely on informal mentoring, or what would be called an “old boys’ network,” rather than formal mentoring.

The existence of such an “old boys’ network” is not disputed in Indiana, as evidenced by the views of respondents from the 2004 survey. Nearly all women respondents and a majority of men believe that the “old boys’ network” continues to exist,\textsuperscript{345} and virtually all of these women

\textsuperscript{340} Id. at 27. The actual figures at 36 percent of women and 10 percent of men. Id.
\textsuperscript{341} Epstein, supra note 163, at 343.
\textsuperscript{342} A study of private law firms in Washington found that three quarters of firms have mentoring programs, which includes the 58 percent that have informal programs and 16 percent that have formal programs. Washington SAGE Report, supra note 262, at 59.
\textsuperscript{343} Catalyst, supra note 265, at 14. The figures are 43 percent of white attorneys of both genders and 31 percent of female attorneys of color. Id.
\textsuperscript{344} 2004 Indiana Report supra note 14, at 20. The figures are 40 percent of women and 28 percent of men. Id.
\textsuperscript{345} 2004 Indiana Report supra note 14, at 22. The figures are 91 percent of women and 55 percent of men. Id.
respondents believe such a network assists male attorneys more than it does female attorneys.\footnote{2004 Indiana Report \textit{supra} note 14, at 22. The figure is 94.3 percent. \textit{Id.}}

One reason for this may be the fact that there are more men than women who are partners and these are more likely to take under their wing young colleagues with whom they identify, and so informal relationships tend to favor male associates.\footnote{Rikleen, \textit{supra} note 3, at 105 (\textit{citing} \textsc{Nossl} & \textsc{Westfall}, \textsc{Presumed Equal: What America’s Top Women Lawyers Really Think About Their Firms} xviii (1998)).} It appears then that men may be more willing to call this type of informal relationship an “old boys’ network” instead of mentoring, thus the lower number of men who report having mentors. Whether mentoring or the “old boys’ network,” the data supports the view that more experienced male attorneys assist less experienced male attorneys rather than similarly situated female attorneys.

It is apparent then that it is in the various aspects of advancement in the workplace that women in the legal profession encounter many obstacles. The organizational dynamics in the legal workplace do not appear to provide women lawyers the opportunities to succeed and advance in the same measure as their male counterparts.

2. Discrimination, including sexual harassment

As indicated earlier,\footnote{See \textit{supra} Part II notes 200-203 and accompanying text.} respondents of the 2004 Indiana survey believe that gender discrimination is a problem of the past. The reality is otherwise, as women continue to experience discrimination. This is so despite formal attempts to eradicate discrimination from the workplace of the legal profession. Formal examples abound. In Minnesota, over ninety percent of law firms have written anti-discrimination policies that include gender discrimination\footnote{Minnesota State Bar Association Women in the Legal Profession Committee, \textit{Self-Audit for Gender Equity Survey of Private Law Firms 1995-2000}, available at http://www2.mnbar.org/committees/women-in-profession/sage-survey-private.pdf (Oct. 2002) [hereinafter “Minnesota SAGE Report”]. The actual figure was 92 percent of Minnesota firms. \textit{Id.}} and in Washington state, over half of law firms indicated that they had written policies regarding gender
discrimination or sexual harassment. Yet, such policies appear to be of limited utility. For example, only one in five of the responding firms in Washington reported either never having received a complaint or not having a formal procedure for responding to a complaint. Furthermore, “recent studies [nationwide] indicate that almost all firms now have [sexual harassment] policies, which typically follow federal regulations prohibiting unwelcome sexual advances and conduct creating an intimidating, hostile, or offensive working environment. Yet in some organizations, the gap between formal prohibitions and actual practices remains substantial.”

The experiences regarding gender discrimination in the workplace of the legal profession, although varied, are similar throughout the states. In Indiana, 20 percent of women and 5.2 percent of men have witnessed or experienced verbal advances. This number is low compared to New York, where 30 percent of women and 11 percent of men have similarly witnessed or experienced verbal advances. Over fifty percent of female attorneys in Indiana reported that they witnessed or experienced the use of inappropriate names (e.g. dear, sweetie), whereas the number was higher in New York at two thirds of female attorneys. In Indiana, 16.9 percent of women reported hearing sexist jokes, and in New York, 65 percent of women reported observing or experiencing the telling of sexist or demeaning jokes. When the Indiana data is compared to that from New York, it appears that Indiana women lawyers experience less harassment or discrimination. This comparison is very telling, since the situation regarding

350 Washington SAGE Report, supra note 262, at 11. The actual figures are that 56 percent of firms had written policies on gender discrimination and 61 percent of firms had written policies on sexual harassment.
351 Id. at 12.
352 Rhode, Unfinished Agenda, supra note 184, at 19.
355 2004 Indiana Report supra note 14, at 25. The actual figure is 54%. Id.
gender discrimination in Indiana has not improved significantly since 1990.\textsuperscript{359} It may be that the way that law is practiced in Indiana is better able to meet the needs of the women in the profession and/or that the practice of law in New York is a much more harrowing experience, especially for female attorneys. The general culture of Indiana may also contribute to these results, a factor which the survey was unable to capture.

3. Work/Family Balance

Work and family balance concerns have traditionally been considered women’s concerns; such a view is evolving now that more men want to play an active parental role in raising their children.\textsuperscript{360} Furthermore, because it affects both male and female lawyers, the balance of work and family has become important to both genders.\textsuperscript{361} Yet the lack of balance of work and family is a challenge to parents in the legal profession. Scholars have analyzed these tensions in the professions:

As they are structured today, professions assume that those who work in them are supported by caregivers at home and have no responsibility for child-bearing. This is not what women want, and increasingly it is not what men want, as it takes its toll on men who are trapped in gender systems of their own that keep them at work and away from the home.\textsuperscript{362}

a. Attorneys with Families

\textsuperscript{359} See supra notes 206-213 and accompanying text.
\textsuperscript{360} Cunningham, \textit{supra} note 240, at 968.
\textsuperscript{361} See Catalyst, \textit{supra} note 265, at 10. (Noting that for 70\% of attorneys of both genders experienced work/life conflict and that for more than one half of women and one third of men attorneys, work/balance is one of the top three concerns.)
\textsuperscript{362} Reichman and Sterling, \textit{Sticky Floors, supra} note 257, at 73.
The data from the Indiana survey reveals that a majority of the attorney respondents are parents,\textsuperscript{363} and that half of the women respondents and one third of men think that family demands have been an obstacle to their success.\textsuperscript{364} This tension between work and family leaves attorneys little time for personal lives. The data shows that more than one third of women lawyers and nearly of men lawyers report dissatisfaction with the amount of time they have for themselves.\textsuperscript{365}

Nationwide, the data shows even more of a tension between work and family life. Over half of attorneys across the nation have children.\textsuperscript{366} For seventy percent of both men and women, including partners and associates, balancing the demands of work with the demands of their personal lives is difficult.\textsuperscript{367} However, in New York, the data shows that eighty percent of attorneys in New York have children,\textsuperscript{368} and approximately three quarters of them are somewhat or very satisfied with the balance between the time spent on work and family responsibilities.\textsuperscript{369} The data in New York shows a discrepancy from the trend seen in Indiana and nationwide regarding the balance of work and family.

While some male lawyers are concerned lately in taking an active role in parenting, it is women lawyers who continue to carry the majority of the load in this area. Nationally, almost twice as many female attorneys as male attorneys have a spouse who is employed full time.\textsuperscript{370} In Indiana, two thirds of the attorney survey respondents have spouses who work either full-time or

\begin{itemize}
  \item \textsuperscript{363} 2004 Indiana Report \textit{supra} note 14, at 28. The actual figures are that 62.8 percent of female attorneys and 80.4 percent of male attorneys have children. \textit{Id}
  \item \textsuperscript{364} \textit{Id.} The actual figures are 50.6 percent of women and 31.9 of men. \textit{Id}
  \item \textsuperscript{365} \textit{Id.} The actual figures are 35.6 percent of women lawyers and 22.8 of men lawyers. \textit{Id}
  \item \textsuperscript{366} Catalyst, \textit{supra} note 265, at 12. The actual figures are 57 percent of female attorneys and 65 percent of male attorneys. \textit{Id}
  \item \textsuperscript{367} \textit{Id.} at 40.
  \item \textsuperscript{368} New York Bar Report, \textit{supra} note 260, at 9.
  \item \textsuperscript{369} \textit{Id.} at 33. The actual figures are 72 percent of women and 79 percent of men. \textit{Id}
  \item \textsuperscript{370} Catalyst, \textit{supra} note 265, at 12. The actual figures are 84 percent of female attorneys and 44 percent of male attorneys. \textit{Id}.
\end{itemize}
part-time outside of the home, yet over half of the women respondents have spouses who contribute to less than half of the family responsibilities. Furthermore, half of the men agree that they are accountable for less than half of the family responsibilities.

Considerable research has analyzed the relationship between female attorneys’ role as mothers and their under representation in the upper echelons of management. However, a recent study of University of Michigan Law School graduates found that neither marriage nor parenthood has an adverse effect on a woman’s career, once the amount of experience is controlled or excluded. What the study found is that “marriage and children are positively associated with the probability of becoming partner when experience measures are included.”

However, factors closely associated with having children, such as taking leave or working part time, did negatively impact an associate’s probability of becoming a partner.

b. Family Friendly Work Schedules, including Part Time

Often lawyers who struggle with balancing the time demands of the legal profession and the time demands of raising children seek other work schedules. Women in particular are very affected by this balancing act. This is the case because the available data shows that “eighty-five percent of women become mothers during their working lives. Ninety-three percent of mothers aged 25 to 44 work fewer than fifty hours a week year round.”

Part-time work is the main type of alternate work schedule that lawyers utilize so that they can accommodate the needs of their families. Nationally, among lawyers, “almost one in

371 2004 Indiana Report supra note 14, at 28-29. The actual figure is 66.7 percent of women attorneys and 67 percent of men attorneys. Id.
372 The actual figure is 62 percent of the women. Id.
373 The actual figure is 50 percent of the men. Id. at 29.
374 Noonan and Corcoran, supra note 293, at 140-41.
375 Id. at 141.
376 Id.
two women and one in five men want a reduced work schedule.\textsuperscript{378} The unavailability of part-time work scheduling is perceived by lawyers as standing in the way of their careers. In Indiana, nearly half of female attorneys and over ten percent of male attorneys reported that a lack of part-time work scheduling has been an obstacle to their success and will continue to be so in the future.\textsuperscript{379}

Despite these perceptions, part-time work schedules are actually available to many attorneys. In New York, approximately three quarters of lawyers work at places where part-time schedules were available.\textsuperscript{380} In the state of Washington, the majority of law firms surveyed recently reported having policies regarding part-time work.\textsuperscript{381} Nationwide, over ninety percent of the firms listed in the \textit{National Directory of Legal Employers} have either formal or informal flexible work policies; however less than three percent of attorneys in those firms are on a part-time schedule.\textsuperscript{382} In Indiana, the majority of women lawyers and close to half of men lawyers reported that their employer offered some type of part-time schedule,\textsuperscript{383} yet less than twenty percent of female lawyers and slightly over ten percent of male lawyers work part-time.\textsuperscript{384}

Thus, the availability of part time schedules has not translated into more part time working lawyers. It may be that only a few attorneys work part time schedules because of the negative perception associated with working part-time hours. A recent study of partners who

\textsuperscript{378} Catalyst, \textit{supra} note 265, at 42.
\textsuperscript{379} 2004 Indiana Report \textit{supra} note 14, at 27. The actual figures are 43 percent of female attorneys and 11.6 percent of male attorneys have found that a lack of part-time has been an obstacle to their success and will continue to be so 43.6 percent of women and 12.4 percent of men believe it will continue to be an obstacle in the future. \textit{Id}.
\textsuperscript{380} New York Bar Report, \textit{supra} note 260, at 37. The actual figures are 76 percent of female attorneys and 70 percent of male attorneys. \textit{Id}.
\textsuperscript{381} Washington SAGE Report, \textit{supra} note 262, at 10. The actual figure is 58 percent. \textit{Id}. The policies included job sharing, and alternative work schedules as well as part time. \textit{Id}.
\textsuperscript{382} Catalyst, \textit{supra} note 265, at 42 (citing National Association of Law Placement, \textit{National Directory of Legal Employers} (2000)). The actual figures are 94 percent of firms having part time schedules and only 2.9 percent of attorneys work part time hours. \textit{Id}.
\textsuperscript{383} 2004 Indiana Report \textit{supra} note 14, at 27. The actual figures are 54.5 percent of women lawyers and 49.2 percent of men. \textit{Id}
\textsuperscript{384} 2004 Indiana Report \textit{supra} note 14, at 27. The actual figures are 17.4 percent of female lawyers and 11.3 percent of men attorneys. \textit{Id}.
worked reduced hours revealed that nearly three quarters of them report their colleagues believe they lack commitment.\textsuperscript{385} Nationwide data shows that a large majority of women attorneys in private practice think that their use of flexible work arrangements would have a negative impact on their career advancement.\textsuperscript{386} The views regarding part time employees are borne out by further research that has found as follows:

Repeatedly, part-timers say they are “not taken seriously,” as if they are being patronized, allowed to practice law as sort of a hobby. Their jobs are treated like a joke, not weighty and sober and deserving of respect. Many part-timers speak of themselves (and are viewed) as “not pulling their weight,” as “ slackers,” as if they are betraying their colleagues by cheating.\textsuperscript{387}

In Indiana, such views were also seen in the comments included in the 2004 Indiana Bar Report. A number of male respondents expressed their view of part time lawyers as impositions that clients and other full-time attorneys should not be forced to accommodate.\textsuperscript{388}

Another concern about part-time work is “schedule creep,” where an employee is working more hours than the agreed part time schedule, yet earning the reduced wages which accompany reduced hours. This causes resentment by the part-time employee or it may cause an employee to leave the firm before even attempting to work a part-time schedule.\textsuperscript{389}

\textsuperscript{385} English, \textit{supra} note 223, at 209 (\textit{citing} Women’s Bar Association of Massachusetts Employment Issues Committee, \textit{More Than Part-Time: The Effect of Reduced-Hours Arrangements on the Retention, Recruitment and Success of Women Attorneys in Law Firms}, at 21 (2000)). The actual figure was 70 percent. \textit{Id.}

\textsuperscript{386} Catalyst, \textit{supra} note 265, at 56. The data shows that 9 percent of female in-house counsel and 22 percent of female attorneys in law firms believed that the use of a flexible work arrangement would not adversely impact their career advancement. \textit{Id.}

\textsuperscript{387} English, \textit{supra} note 223, at 212.

\textsuperscript{388} See \textit{supra} notes 238-9 and accompanying text.

attorneys work part-time hours and experience schedule creep, they are more likely to either
discontinue their part-time schedule or quit the firm altogether.\textsuperscript{390} At that point, a self fulfilling
prophecy of part timer lawyers takes over. When a part-time lawyer resigns, doubts about that
lawyer’s commitment to the firm are confirmed and the negative views of part timer attorneys
are reinforced. When considering that the majority of part time lawyers are women, this harms
women’s place in the legal profession. As a prominent researcher has stated regarding this
phenomenon: “Women leaving the workforce to be with their children affirm long-held
sterotypes that the proper place for women is in the home. Although you may admire them and
affirm the validity of traditional mothering, the reasoning goes, you should be careful about
hiring women for that very reason.”\textsuperscript{391}

Motherhood for female lawyers in the legal workplace has its accompanying damaging
factors which degrade a mother’s morale. The different treatment by co-workers is an example of
such a factor. In response to such treatment, a woman attorney commented: “look, I had a baby,
not a lobotomy.”\textsuperscript{392} Other factors, such as the negative perceptions of part-time lawyers, have
been linked with attorney attrition.\textsuperscript{393} In a study of attorneys who left their firms between 1996
and 1998, four out of ten reported that their decision to leave was affected by their firm’s
approach toward reduced-hours schedules.\textsuperscript{394} There is no data from Indiana where attorneys who
have left firms have been interviewed to ascertain to what extent the retention of female
attorneys is a problem. It would appear that attrition may account for the low percentage of

\textsuperscript{390} Rikleen, \textit{supra} note 3, at 136.
\textsuperscript{391} English, \textit{supra} note 223, at 226.
\textsuperscript{392} See Rhode, Balanced Lives, \textit{supra} note 240 at 16.
\textsuperscript{393} English, \textit{supra} note 223; Rikleen, \textit{supra} note 3 at 187; Rhode, Unfinished Agenda, \textit{supra} note 184 at 6; Rhode,
\textsuperscript{394} English, \textit{supra} note 223, at 226 (\textit{quoting} Women’s Bar Association of Massachusetts Employment Issues
Committee, \textit{More Than Part-Time: The Effect of Reduced-Hours Arrangements on the Retention, Recruitment and
Success of Women Attorneys in Law Firms}, at 2 (2000)).
female partners at firms, a percentage which is not proportional to the number of women entering the profession. To validate this hypothesis, further research is needed.

The negative views of part time lawyers and of attorneys’ struggles to balance work and family nationwide are likely related to the ever increasing billable hour requirements at firms. These requirements show the change in the legal profession from a profession to a business and the concomitant increased competition at the large law firms; which are trend setters in the profession.

4. Satisfaction

Despite the obstacles for women lawyers and challenges for attorneys in general, a high percentage of both men and women attorneys are overall satisfied with their legal careers. In Indiana, nearly 85 percent of female attorneys and almost 90 percent of male attorneys report being somewhat or very satisfied with their current employment.395 A similar percentage is seen in New York, where 91 percent of women attorneys and 90 percent of men attorneys are somewhat or very satisfied with their work as well.396 Finally, in a nationwide survey of young lawyers, 8 out of every ten respondents were somewhat or very satisfied with their current position.397

Yet this overall satisfaction is qualified by gender and age. In Indiana, for example, a higher number of women attorneys than men attorneys are dissatisfied with the amount of time worked, their compensation and their level of input into their management decisions.398 And among the younger lawyers, over sixty percent of them nationwide would consider changing

395 The actual figures are 84.3 percent of female attorneys and 88.2 of male attorneys. See 2004 Indiana Report supra note 14, at 15. Indiana’s leading efforts towards achieving lawyer satisfaction should be noted as possibly contributing to the overall satisfaction figures. See Randall T. Shepard, The Personal and Professional Meaning of Lawyer Satisfaction, 37 VAL. L. REV. 161, 172-4 (2002).
397 ABA YLD Survey, supra note 297, at 18.
employment within the next two years.\textsuperscript{399} Thus, the data on satisfaction overall has to be tempered by the specific areas of dissatisfaction by gender and age.

V. Conclusion and Recommendations

While the overall satisfaction data shows that Indiana attorneys and their counterparts nationwide appear on the whole satisfied with their careers, it is evident that there is still room for improvement. Disparity between the genders in the legal profession continues, especially in the area of financial compensation. In terms of advancement, discrimination in the workplace and the work/family balance, women still show similar dissatisfaction and gaps with similarly situated men. Even though it may appear that gender equity is the norm in the legal profession, the data shows that women lawyers are still not on even ground with their male counterparts in key aspects. The longer the current situation remains, even if it is based on an innocent belief that time will take care of it, the more ingrained it becomes. The fundamental changes in the legal profession recommended in 1990 following the Indiana State Bar Association report\textsuperscript{400} have not taken place and are still required at present.

Other institutions nationwide have tackled the problem of gender bias in the legal profession in various ways. There are examples which the judiciary, court systems, lawyers, firms, and other legal employers may emulate or adapt to address the challenges ahead. The following are some suggestions and strategies for addressing these.

A. Effectuate change in the law firm work culture: billing, evaluation and hours

\textsuperscript{399} ABA YLD Survey, \textit{supra} note 297, at 29; \textit{see also}, Paula Patton, \textit{What is Right About the Profession of Law} 5, The Complete Lawyer, available at http://www.thecompletelawyer.com/volume2/issue4/article.php?ppaid=304 (last visited March 7, 2007) (noting that women indicated they would be less likely to become lawyers if they had to do it all over again.)

\textsuperscript{400} \textit{See supra} note 12 and accompanying text.
Because of the heavy billable hour requirements, the organizational structure of law firms only evaluates and promotes lawyers based on the number of hours they bill yearly and in comparison to their co-workers. This system promotes inefficiency. Should firms switch to billing clients on a per project basis, then attorneys could complete their projects in an efficient number of hours, and more time to take on additional projects or to work reduced schedules.

This change would alleviate the concerns of part-time lawyers, such as schedule creep and or negative perceptions. Part-time lawyers would work their reduced hours on projects in proportion to their compensation. Part-time lawyers would continue to be part of their teams and yet be able to work their agreed upon reduced-hours schedule. The evaluations of part time lawyers would focus on the quality of work produced and the number of projects completed rather than billable hours. Such a system could also promote transparent career evaluation and advancement. Lawyers would be considered for promotion once they complete a certain number of projects and provided that their work product is of a high enough quality.

Attorneys would be better able to balance their careers and family demands under a project-based system, since it would provide greater predictability in their schedules and relieve them from the need to be constantly available. The existing paradigm of constant availability and escalating billable hours which define the ideal lawyer is problematic as it may lead to attrition, burn out and increased costs of hiring and training replacements.

The ultimate aim of a per-project system would be to redefine the ideal lawyer, from a constantly available and inefficient one to one who produces the highest quality work and has a balance of work and life. The culture and values of the firm and the individual attorneys would

---

change when work quality is preferred over face-time. Other forms of alternative billing could be explored, for example, when handling small probate drafting matters or other uncontested legal services.⁴₀²

Changing the work environment of the law firm would include the increased availability and acceptance of flexible or reduced-hour schedules. While most law firms have written policies covering part-time or flexible schedules, the data has shown that very few attorneys actually use them. The data also shows that increased use of part time schedules may prevent attorney attrition and allow more women lawyers to remain in the partner pipeline. Appendix B contains details about resources regarding changing the law firm culture by enhancing attorney retention and increasing the presence of women in the profession.

B. Encourage the law schools to educate students about the work experiences in the legal profession and explore the use of apprenticeships for law students.

Law schools could be enlisted to teach law students about the realities of the legal profession and not only teach them how to “think like a lawyer” in substantive law courses and how to act like an ethical lawyer in Professional Responsibility courses. Law schools can teach students what to expect in their future careers as well, including how to balance the demands of their work and personal lives. Additionally, law schools can alert students to the potential obstacles to their advancement, especially for women. If students were more aware of the realities of the practice of law, they could alter their future course of employment (i.e., by choosing a particular area of practice or legal employment) or at the very least, enter the profession with open eyes. This author has heard firsthand the comments from former students,

⁴₀² See generally James A. Calloway and Mark A. Robinson, WINNING ALTERNATIVES TO THE BILLABLE HOUR: STRATEGIES THAT WORK (2002).
often women, expressing surprise at the reality of the practice of law and wishing they had been
warned of what lay ahead for them in the profession.

Another possible solution would be to have the states require short term apprenticeships, where the law students actually spend time in the legal practice workplace and learn by doing and experiencing. Students would complete an apprenticeship of a specific duration while in law school, under the supervision of senior volunteer lawyers. This would allow the students to share their lived knowledge with their classmates and professors during their time in law school in preparation for entrance into the practice.

Other apprenticeship models where women law students are mentored by those lawyers to whom they are apprenticed while in law school should also be explored, as also with other law students from underrepresented groups. When women law students at Harvard Law School and other elite law schools are showing self doubt in their endeavors, the importance of mentoring is paramount. Furthermore, if women lawyers are able to directly mentor women law students, the differences in experience which have become evident over time would be openly shared and discussed.

C. Continue the use of Task Forces and Bar Associations to assist in bringing about change through further research and analysis, including comparative and of other professions.

As mentioned above, in the last decade or so, a number of bar associations and states’ supreme courts have come together to create task forces on gender equity and diversity concerns. In some states, the task forces conducted surveys similar to the Indiana 2004 one analyzed in this


404 See Rhode, Unfinished Agenda, supra note 184 at 31. (discussing how some women lawyers have varying levels of support for women’s issues depending on their internalizing of the culture in which they have succeeded.)

405 See supra notes 9-14 and accompanying text.
Article. Some states, such as Minnesota and Washington, had law firms complete the surveys as self assessments of their gender equity. The task forces collected the results and reported best practices based on the compilations. Best practices for gender equity in a local, particularized manner are essential to bring about change and bar associations can assist in these efforts. Other efforts which have proven effective and may be emulated are included in Appendix C.

The work of the task forces and bar associations must continue analyzing the obstacles for success for women lawyers and also take on further exploration of the experiences in the legal profession of other underrepresented groups, such as racial, religious, ethnic and sexual orientation minorities. Comments by some respondents in the Indiana 2004 survey showed a need for further research and analysis in this area. The task forces and bar associations could take on two specific areas that need more attention and further analysis: the disparity in financial compensation between the genders and the elevation of more women judges to the bench. The task forces will need to continue to assess the status of women in the profession periodically, to monitor progress and areas still to be further researched and analyzed.

The task forces and commissions should also undertake comparative research and analysis of the status of women in the legal profession in other countries, in order to ascertain whether the phenomena identified in the United States is present in other countries. If the other

406 Minnesota SAGE Report, supra note 349 at 2.
408 See e.g. Georgia Supreme Court Commission on Racial and Ethnic Bias in the Court System, Let Justice Be Done: Equally, Fairly and Impartially, 12 GA. ST. U. L. REV. 687 (1996) for the report of a commission studying racial and ethnic diversity.
409 The pay disparity may also correlate to the contractor versus employee differentiation. Further research is needed in this area. While outside the scope of this Article, it should also be noted that the salary disparities may possibly violate the Equal Pay Act of 1963, P.L. 88-38, and may be within the purview of the Equal Employment Opportunity Commission. Further research is also needed in this area.
410 For a history of women judges, see National Center for the State Courts, WOMEN IN THE COURTS (Winifred L. Heppele & Laura Crites, eds. 1978).
411 See e.g. European Women Lawyer’s Association, www.ewla.org (last visited March 7, 2007).
countries are farther ahead than the United States in gender equality, lessons could be learned from their success. Conversely, the United States may have lessons to teach our counterparts in other countries, if comparative research shows that women lawyers fare better here than abroad. Finally, further study can be undertaken to compare women lawyers with other women professionals in the United States, to see what lessons can be learned from the business and medical fields, for example. As an illustration, research and best practices drawn from the business world in the area of women’s re-entry to the workplace after either maternity leave or part time scheduling would be very relevant to the study of women in the legal profession.

D. Renew the Commitment to Addressing the Concerns Raised Regarding Women in the Legal Profession

Women lawyers continue ensconced in the “50/15/15 conundrum”\(^\text{412}\) where it has been fifteen years since women comprised fifty percent of law students but only fifteen percent of law firm partners. Neither the passage of time nor the slowly trickling pipeline has taken care of having women reach higher levels of advancement in the legal profession. Yet this should not be cause for pessimism; rather, it should usher an era of renewed commitment to addressing the concerns raised in studies such as the 2004 Indiana survey regarding the status of women in the legal profession. The legitimacy of our legal system depends on its inclusiveness and ability to integrate the views of all those who play a part in it by allowing them the opportunity to reach the highest levels of achievement.

Women have offered much to the legal profession so far in the little over a century that they have been admitted to the practice.\(^\text{413}\) It is breathtaking to imagine how much more they can

\(^{412}\) See NAWL 2006 Survey, supra note 293 at 1.

\(^{413}\) See e.g. Robert McCrate, What Women Are Teaching A Male Dominated Profession, 57 FORD. L. REV. 989 (1989); see also, Minna J. Kotkin, Professionalism, Gender, and the Public Interest: The Advocacy of Protection, 8
offer with an increased presence at all levels of the practice, with equal pay and opportunities, and with a voice which can be heard in leadership positions in the profession.

APPENDIX A

Research Methods for 2004 Indiana Report

The Survey Research Center at Indiana University – Purdue University Indianapolis (formerly the Indiana Public Opinion Laboratory) was commissioned by the Indiana Supreme Court Commission on Race and Gender Fairness, in partnership with the Indiana State Bar Association Women in Law Section and Indianapolis Bar Association Women and the Law Division, to conduct a survey of 2000 Indiana licensed attorneys as to their experiences and views with regard to gender issues within the judicial system. The commission provided a fourteen page questionnaire that included an opportunity for respondents to write additional comments at the end. Two thousand respondents were randomly chosen from the list of 15,606 attorneys registered with the Indiana Supreme Court.

The questionnaire was sent to 2000 respondents. The staff at the Survey Research Center at IUPUI collected the data using a method designed to ensure the collection of high quality data and improve response rates by sending an official cover letter with the questionnaire, sending a second questionnaire if required, and issuing a follow-up/reminder postcard. The initial

ST. THOMAS L. REV. 157 (1995)(discussing women lawyers’ role in the practice of law and how their values of care and connection can find place in advocacy of protection that can change professional norms.)

414 Reprinted from The Survey Research Center at IUPUI, Gender Issues within the Indiana Judicial System, supra note 14, Prepared for the Indiana Supreme Court Commission on Race and Gender Fairness (2005)

69
questionnaire was mailed on October 12, 2004. The reminder postcard was mailed two weeks later on October 26, and a follow-up questionnaire was mailed on November 2 to those respondents who had not returned their questionnaires. Data was continuously entered as questionnaires were returned over the following months. Ultimately, 46 percent of the 2000 attempted contacts returned usable data, resulting in a very good response rate for a self-administered questionnaire of this length. The preliminary results of this survey were presented to the Indiana Supreme Court Commission on Race and Gender Fairness in March 2005. Review and analysis of the data continued through the summer and fall.

APPENDIX B

Resources

The Project for Attorney Retention (“PAR”) at the University of California Hastings College of Law seeks to enhance the recruitment and retention of lawyers through the use of flexible schedules so as that they are able to lead balanced lives.\textsuperscript{415} PAR has developed best practice recommendations for firms and a PAR Usability Test that allows firms to determine whether their part-time programs are effective retention tools.\textsuperscript{416}

Deloitte and Touche’s longstanding “Women’s Initiative” is at the core of the retention and advancement of women in the workplace.\textsuperscript{417} The program started 1993 and has caused an


\textsuperscript{416} \textit{Id.}

evolution in the firm’s culture.\textsuperscript{418} When surveyed recently, a large majority of their women employees reported that they would recommend Deloitte as a great place to work.\textsuperscript{419}

**APPENDIX C**

**Significant Bar Association Efforts**

The Bar Association of San Francisco entreated over 80 law firms and corporate legal departments to pledge to ensure gender equity in their workplace.\textsuperscript{420} Their pledges committed them to: (1) raise their levels of women in partner and management positions to at least 25 percent by the end of 2004; (2) have at least one chair or managing partner by the end of 2005; (3) and accept of the concept of part-time partnership.\textsuperscript{421} Three years later, 63 percent of those who signed the pledge had 25 percent female partnership, and in 69 percent of firms and 54 percent of legal departments, at least 25 percent of their management were women.\textsuperscript{422}

Chicago started a program similar to the one in San Francisco. It is named “A Call to Action” and currently has forty six participants.\textsuperscript{423} The Bar of the City of New York has drafted a Statement of Diversity Principles; currently 82 firms are signatories.\textsuperscript{424} These firms share data about the composition of their workforce with the bar, in order to create a baseline for

\textsuperscript{418} Id.
\textsuperscript{419} Id.
\textsuperscript{421} Id.
\textsuperscript{422} Id.
comparison.\textsuperscript{425} The data collection is intended to be ongoing, so as to assess the firms’ progress in becoming more diverse.\textsuperscript{426}