
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 profession¹ — which continued well into the mid-twentieth century² — to present day achievements, it is current conventional wisdom that female 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, almost half of those in law school now are women³ and nearly one-third of the lawyers in the profession are

* Associate Professor of Law, Indiana University School of Law, Indianapolis, J.D. University of Pennsylvania School of Law, B.A. Princeton University. The author is grateful to Justice Myra C. Selby, formerly of the Indiana Supreme Court, and current Co-Chair of the Indiana Supreme Court Commission on Race and Gender Fairness for her leadership in bringing the concerns of race and gender in the legal profession to the forefront by commissioning the empirical study which yielded the data analyzed in this article. The author appreciates the comments from the faculties at the Indiana University School of Law and at the St. Louis University School of Law, where she presented this article. The author is also grateful for Professor R. George Wright's amiable exchange of ideas with regard to the preparation of this article. Professor Mary Harter Mitchell provided useful sources for this article, as did Kathleen Grove and the Honorable Robyn Moberly, and to all, the author is grateful. The able research assistance of Renee Suarez Congdon, Michele Polanco Stephanie Sicker and Jannie Steck, Indiana University School of Law, Indianapolis is appreciated. The author wants to acknowledge the invaluable research assistance and comments of Debra Denslaw, Reference Librarian, as well as Dragomir Cosanici, Head of Reference, Ruth Lilly Law Library, Indiana University School of Law, Indianapolis. Finally, the support of Adrienne Meiring and Camille T. Wiggins, Staff Attorneys, Office of Court Administration, Indiana Supreme Court is appreciated, as is the data input of Professor James Wolf of the Indiana University Purdue University Indianapolis Survey Research Laboratory.

1. *See* *Bradwell v. State*, 83 U.S. 130, 139 (1872) (affirming denial of application for admission of Myra Bradwell to practice law in Illinois).

2. The last state to admit a woman to practice law was Alaska, where Mildred Herman was admitted in 1950. KAREN BERGER MORELLO, *THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA: 1638 TO THE PRESENT* 38 (1986).

3. ABA Commission on Women in the Profession, *A Current Glance at Women in the Law* 1 (2005), available at <http://www.abanet.org/women/ata glance.pdf> [hereinafter ABA Commission]. *See also* LAUREN STILLER RIKLEEN, *ENDING THE GAUNTLET: REMOVING BARRIERS TO WOMEN'S SUCCESS IN THE LAW* 12 (2006).

women.⁴ But the number of female law students and attorneys alone do not tell the complete story about women in the legal profession and how they fare in this traditionally male domain.⁵ As a response to this phenomenon, and in order to investigate ways to understand and improve gender⁶ 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.⁷

The emerging evidence 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.⁸ 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."⁹ Similarly, in 1990, the Indiana State Bar Association's Commission on Women in the Profession studied gender concerns and the status of female attorneys in the legal profession in Indiana and found extensive gender bias in the courts and in the legal system.¹⁰ This finding was consistent with those of similar commissions or task forces in other states.¹¹ In order to address the biases found in the 1990 Indiana State Bar study, recommendations were made so that the legal profession would fundamentally change the way it did business to allow women to participate as fully and equally as men.¹²

4. ABA Commission, *supra* note 3, at 1.

5. Cf. Lisa Catanzarite, *Still a Man's World: Men Who Do "Women's Work,"* 101 AM. J. SOC. 766, 766-67 (1995). This is in contrast to, for example, nursing, social work, librarianship, or education, which have traditionally been viewed as female occupations.

6. The term "intersectionality" was coined by Professor Kimberle Williams Crenshaw in her leading article. I note that the topics of race and/or diversity in the profession have 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. 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 Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 150-52 (1989). See also Jill Schachner Chanen, *Early Exits: Why Women of Color are Vanishing from Large Law Firms*, 92 A.B.A. J. 33 (2006). Further research into this area is clearly needed.

7. See Myra C. Selby, *Examining Race and Gender Bias in the Courts: A Legacy of Indifference or Opportunity?*, 32 IND. L. REV. 1167, 1168-69 (1999) (narrating the evolution of race and gender commissions nationwide).

8. Ann J. Gellis, *Great Expectations: Women in the Legal Profession, a Commentary on State Studies*, 66 IND. L.J. 941, 941 (1991) (citing Tom Goldstein, *Women in the Law Aren't Yet Equal Partners*, N.Y. TIMES, Feb. 12, 1988, at B7, col. 3.; Doreen Weisenhaus, *Still a Long Way to Go for Women, Minorities*, NAT'L L.J., Feb. 8, 1988, at 1, col. 4.

9. Gellis, *supra* note 8, at 941.

10. *Id.* at 941-42 (citing Indiana State Bar Association, *Report of the Commission on Women in the Profession* 10 (1990)).

11. Gellis, *supra* note 8, at 941.

12. *Id.* at 976.

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. 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 could 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 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. Female lawyers have sought the ability to practice law as well as acceptance into the profession from the

13. INDIANA SUPREME COURT COMMISSION ON RACE AND GENDER FAIRNESS, HONORED TO SERVE: EXECUTIVE REPORT AND RECOMMENDATIONS 3 (2002), *available at* <http://www.in.gov/judiciary/fairness/pubs/fairness-final-report.pdf>.

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].

15. Timothy O'Brien, *Up the Down Staircase: Why Do So Few Women Reach the Top of Big Law Firms?*, N.Y. TIMES, Mar. 19, 2006, § 3 (Late Edition) at 1.

earliest times in our nation's history. The first woman to practice 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 women practicing law until the nineteenth century; however it does show several women as *pro se* litigants in Colonial court.¹⁹

Women's slow but steady steps toward acceptance and equality in the practice of law continued in post-Colonial times. In the latter part of the nineteenth century, the *Chicago Legal News* noted the burgeoning jury practice of Mrs. Mary E. Magoon, a lawyer in North English, Iowa County.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 female lawyer in the United States.²¹

Also in 1869, Myra Colby Bradwell passed the Chicago bar exam.²² Mrs. Bradwell, the wife of a Cook County Circuit Court judge, had been the founding editor in 1867 of the *Chicago Legal News*, the first legal journal of the West.²³ Because she had passed the examination, Mrs. Bradwell petitioned the Illinois Supreme Court for a license to practice law.²⁴ The Illinois Supreme Court twice denied her petition: Once because of her status as a married woman, thus unable to enter into contracts and the second time, because she was a woman.²⁵ The court found traditionally

16. MORELLO, *supra* note 2, at 4. See Lois Green Carr, *Margaret Brent: 1601-1671*, in 1 NOTABLE AMERICAN WOMEN 236, 236-237 (Edward T. James et al. eds., Belknap Press 1971), available at <http://www.awomanaweek.com/brent.htm> [hereinafter Carr, *Margaret Brent 1601-1671*]; Lois Green Carr, *Margaret Brent: A Brief History*, MARYLAND STATE ARCHIVES, <http://www.mdarchives.state.md.us/msa/speccol/sc3500/sc3520/002100/002177/html/mbrent2.html> (last visited Sept. 14, 2007) [hereinafter Carr, *Margaret Brent: A Brief History*]. Notably, after being a little known figure 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 also American Bar Association, 17th Annual Margaret Brent Women Lawyers of Achievement Awards Luncheon, <http://www.abanet.org/women/awards.html> (last visited Sept. 14, 2007).

17. Carr, *Margaret Brent: 1601-1671*, *supra* note 16; see also Carr, *Margaret Brent: A Brief History*, *supra* note 16.

18. *Id.*

19. MORELLO, *supra* note 2, at 8; see also Carrie Menkel-Meadow, *Excluded Voices: New Voices in the Legal Profession Making New Voices in the Law*, 42 U. MIAMI L. REV. 29, 35 (1987) (discussing the early history of women in the legal profession).

20. MORELLO, *supra* note 2, at 11.

21. *Id.* Mrs. Mansfield was also often known by her nickname and married name, Belle Babb Mansfield. *Id.*

22. *Id.* at 14.

23. *Id.*

24. *Id.* at 15.

25. *Id.* at 16-17.

that there had been no female lawyers in England and it was concerned about the “effect [that] the presence of women as barristers in [the] courts would have upon the administration of justice.”²⁶

Mrs. Bradwell appealed to the United States Supreme Court, asserting under the Fourteenth Amendment and Article IV of the United States Constitution, that she was entitled to the privileges and immunities of all citizens of the United States and should be admitted to practice law on the same footing as men.²⁷ The Supreme Court denied the appeal, holding that the right to practice law is not one of the citizenry’s privileges and immunities the Constitution prohibits states from abridging.²⁸ Justice Bradley, concurring, penned the following language, evocative of the views about women predominant at the time: “The 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.”²⁹ Years later, in 1890, the Illinois Supreme Court, *sua sponte*, finally allowed Mrs. Bradwell to practice law by granting her license.³⁰

The late nineteenth century saw the United States Supreme Court admit Belva Lockwood to the bar of the Supreme Court.³¹ She is recognized as the first woman lawyer to appear before the Court.³² With the passage of time, female lawyer pioneers broke new ground and entered into arenas where women had previously been excluded from the legal profession.

B. FEMALE LAWYERS IN INDIANA – PRESENT SINCE THE NINETEENTH CENTURY

Although Mrs. Antoinette Dakin Leach, the first female attorney admitted to practice before the Indiana Supreme Court in 1893, is the best known female attorney pioneer, other women in the state had previously been admitted to practice law before the lower courts.³³

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.³⁴ A few county courts decided to admit

26. *In re Bradwell*, 55 Ill. 535, 542 (1870).

27. MORELLO, *supra* note 2, at 18-19.

28. *Bradwell v. State*, 83 U.S. 130, 139 (1872).

29. MORELLO, *supra* note 2, at 20.

30. *Id.* at 21.

31. SUPREME COURT DECISIONS AND WOMEN’S RIGHTS: MILESTONES TO EQUALITY 214 (Clare Cushman ed., 2001).

32. *Id.*

33. Betty Barteau, *Thirty Years of the Journey of Indiana’s Women Judges 1964-1994*, 30 IND. L. REV. 43, 55 (1997).

34. *Id.* (citing James E. Farmer, *Indiana’s First Woman Lawyer: The Historical Evidence*, 37 RES GESTAE 109, 109 (1993)). For a history of female lawyers in the Midwest of the United States, see Debra Denslaw, *Women and the Law*, in THE AMERICAN MIDWEST:

women to practice law, overlooking the state constitutional voter registration requirement.³⁵ At least two female lawyers were admitted to the bar by circuit courts prior to Mrs. Leach's admission by the Supreme Court.³⁶ 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.³⁷ She practiced law in Terre Haute and Indianapolis, Indiana, and Grand Rapids, Michigan during her professional career.³⁸

In 1886, the Hendricks Circuit Court admitted CeDora Lieuellen to the bar.³⁹ A few other women were admitted to the bar in Indiana 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.⁴⁰

The experience of Mrs. Antoinette Dakin Leach is telling of the struggles of women to join the practice of law.⁴¹ Like the female applicants who preceded her, Mrs. Leach had first petitioned the circuit court for admission.⁴² The Greene Circuit Court denied Mrs. Leach admission to the bar because she was not a registered voter, yet it made a special finding that Mrs. Leach was of good moral character and learned in the law.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."⁴⁴ Finding 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.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. The Supreme Court's action of admitting Mrs. Leach to the practice of law in Indiana is noteworthy because it was the first state

AN INTERPRETIVE ENCYCLOPEDIA 1553-55 (Richard Sisson et al. eds., Indiana Univ. Press 2007).

35. Barteau, *supra* note 33, at 55.

36. *Id.*

37. *Id.* 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*, UNIVERSITY OF MICHIGAN LAW SCHOOL NEWS AND INFORMATION, Mar. 2, 2006, <http://www.law.umich.edu/newsandinfo/lqn/lqnstories/Kilgore/>. 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. By comparison, Harvard Law School first admitted women in 1950. MORELLO, *supra* note 2, at 100.

39. Barteau, *supra* note 33, at 56.

40. *Id.* at 59-60.

41. Sandra Day O'Connor, *Foreword, First Women: The Contribution of American Women to the Law*, 28 VAL. U.L. REV. xiii (1994).

42. Barteau, *supra* note 33, at 59.

43. *Id.*

44. *Id.*

45. *Id.*

to admit women to practice law without a statute or constitutional amendment.⁴⁶

C. MODERN TIMES FOR FEMALE ATTORNEYS IN THE UNITED STATES:
THE TWENTIETH CENTURY TO THE PRESENT

With the passage of time, greater numbers of women were admitted to law school and entered the legal profession in this country. Eventually, female lawyers became 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 States Supreme Court Justice, was unable to find an attorney position in 1952 after graduating second in her law school class at Stanford; the only offer she received was a position as a legal secretary.⁴⁷ The early pioneers entering the profession had to work their way and make their own paths through the predominantly male legal profession.⁴⁸

Over time, the identification of a phenomenon named 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 female partners at large law firms.⁴⁹ The American Bar Association (ABA), in response to this and similar concerns, created the Commission for Women in the Profession to "assess the status of women in the legal profession, identify barriers to advancement, and recommend to the ABA actions to address problems identified."⁵⁰ Thus, the legal profession has turned its gaze inward to analyze women's performance and

46. See Randall T. Shepard, *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 ceremony. *First Woman Lawyer Remembered*, INDIANAPOLIS STAR, June 13, 1993, available at <http://www.rootsweb.com/~inmarion/genealogy/antoinetteleach.html>. One hundred years after the admission of Mrs. Leach, there were 3006 female lawyers in Indiana. *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." See *Hon. Patricia Gifford Receives Antoinette Dakin Leach Award*, INDIANAPOLIS B. ASS'N NEWSL. (Indianapolis B. Ass'n, Indianapolis, Ind.), Sept. 20–Oct. 3, 2006, at 1.

47. JOAN BISKUPIC, SANDRA DAY O'CONNOR: HOW THE FIRST WOMAN ON THE SUPREME COURT BECAME ITS MOST INFLUENTIAL JUSTICE 4, 28 (2005).

48. See MONA HARRINGTON, WOMEN LAWYERS: REWRITING THE RULES 18-20 (1993).

49. See *infra* notes 283-89 and accompanying text. The term glass ceiling refers to the "barriers to the advancement of minorities and women within corporate hierarchies." U.S. Glass Ceiling Commission, *A Solid Investment: Making Full Use of the Nation's Human Capital* (Final Report of the Commission) 9 (1995), available at http://digitalcommons.ilr.cornell.edu/key_workplace/120.

50. ABA, Commission of Women in the Profession Homepage, Creation, <http://www.abanet.org/women/aboutus.html> (last visited Nov. 13, 2007).

the obstacles they face in the practice of law.⁵¹ As a result, in Indiana, the Race and Gender Commission studied the status of women in the legal profession in 2004, and the Indiana State Bar Association studied the status of women in the profession in 1990.⁵² The next section will compare the two studies and assess the current status of women in the legal profession in Indiana.

III. COMPARISON OF THE 1990 INDIANA STUDY TO THE 2004 STUDY: HAVE THE ACHIEVEMENTS AND EXPERIENCES OF FEMALE ATTORNEYS IN INDIANA IMPROVED?

A. SUMMARY OF FINDINGS

Comparative analysis of the data between the two studies 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.⁵³ The areas in which female attorneys experience significant disparity compared to their male counterparts include financial compensation, perceptions of competency, and perceptions about their commitment to the practice of law. The fact that female attorneys are perceived as less committed to the practice of law may result in particular disadvantages in today's very competitive legal workplace.⁵⁴

With regard to improvements in the status of women in the legal profession in Indiana over 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 female 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 female 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 2000 attorneys licensed in Indiana. The attorneys,

51. See *supra* notes 9-14 and accompanying text.

52. See *supra* notes 10-15 and accompanying text.

53. See Gellis, *supra* note 8, at 943. See also 2004 INDIANA REPORT, *supra* note 14, at 5.

54. See, e.g., *infra* note 158 and accompanying text (showing one male respondent's view of women's commitment to the practice of law).

randomly chosen, were to assess “their experiences and views with regard to gender issues within the judicial system.”⁵⁵ With a close to 50% response rate, questionnaires yielded sufficient usable data from which to analyze current trends.

C. A DEMOGRAPHIC PICTURE OF FEMALE ATTORNEYS IN INDIANA –
NUMBERS, AGE, YEARS OF PRACTICE AND GEOGRAPHIC LOCATION

As could be expected by the passage of time, the number of female attorneys in Indiana has increased greatly since the early 1990s.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 female members of the Indiana bar doubled, going from 15% in 1990 to 31% in 2004.⁵⁹ Thus, the growth rate of female lawyers has exceeded the overall growth rate 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 The notion that the situation of women in the legal profession is improving or has already improved on its own. For example, a female judge respondent wrote in the comments section of the 2004 Indiana survey, “[f]emale 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 in the legal profession.⁶² This trend of few female lawyers in leading positions continues today, although female attorneys are older and more experienced. For example, in 1990, the median ages of lawyers in Indiana was thirty-five for women and forty-one for men. In 2004, the median age of female lawyers was forty and for male lawyers was forty-nine.⁶³ 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.

55. 2004 INDIANA REPORT, *supra* note 14, at 4.

56. IND. STATE BAR ASS'N, REPORT OF THE COMMISSION FOR WOMEN IN THE PROFESSION 10 (1990); 2004 INDIANA REPORT, *supra* note 14. The statistics used for comparison between 1990 and 2004 are from these two Indiana bar reports.

57. Gellis, *supra* note 8, at 942.

58. Interview with Susan Jacobs, Associate Executive Director, Indiana State Bar Association, in Indianapolis, Ind. (June 13, 2006) (on file with author).

59. 2004 INDIANA REPORT, *supra* note 14, at 5.

60. See Deborah Rhode, *Gender and the Profession: The No-Problem Problem*, 30 HOFSTRA L. REV. 1001, 1001 (2002).

61. See 2004 INDIANA REPORT, *supra* note 14, at 61 cmt. 782.

62. See Gellis, *supra* note 8, at 943.

63. See 2004 INDIANA REPORT, *supra* note 14, at 6.

Further analysis of the age-gender correlation for attorneys shows that in 1990, almost three-quarters of the female lawyers in Indiana were under forty years old.⁶⁴ Yet by 2004, the number of female lawyers under forty decreased to approximately 50%.⁶⁵ 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% of women had fifteen years or less of experience in 1990,⁶⁶ whereas in 2004, that number dropped to 65% for women who had fourteen years or less of experience in the practice of law.⁶⁷ Notably, in terms of years of experience, the largest grouping of men falls at the opposite end of the largest grouping of women; while approximately one-quarter of female attorneys had between five to nine years of experience, one-third of all male attorneys had twenty-five to thirty-nine years of experience.⁶⁸

D. TYPES OF EXPERIENCES IN LEGAL PRACTICE: TRENDS IN WOMEN'S EMPLOYMENT RATES

1. Workplace Distribution by Type of Legal Practice

Female lawyers are currently represented in all forms of legal employment. The corporate sector is one area of legal practice in which the data shows a decrease in representation of women since 1990. However, it is interesting to note that the state and local government work categories saw the largest increase for both genders. The largest decrease in the representation of male lawyers was in the private practice firm category, where they decreased from 54.8% in 1990⁶⁹ to 50.6% in 2004.⁷⁰

Table 1.

Workplace Distribution by Type of Legal Practice

	1990	2004
Corporate Sector	11.1%	7%
State and Local Government	16.6%	23.9%
Private Practice	39.4%	40.4%
Judiciary	2%	27%
Academic	2.9%	4%

The overall presence of female lawyers at the workplace is one area in which the 2004 survey data showed a measure of progress. Whereas in

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 943.

67. See 2004 INDIANA REPORT, *supra* note 14, at 6.

68. *Id.*

69. See Gellis, *supra* note 8, at 944.

70. See 2004 INDIANA REPORT, *supra* note 14, at 8.

1990 the majority of male attorneys had no female colleagues,⁷¹ by 2004 the number of male lawyers who indicated they had no female colleagues had decreased to 39.5%.⁷²

Furthermore, there has been over a 10% increase in the number of male attorneys who work in firms with three or more female attorneys.⁷³ There has also been an increase in the number of women who work with three or more female attorneys⁷⁴ although the percentage of women who are the only woman in their firm has remained relatively constant at close to one-third of all female attorneys surveyed.

The top two types of legal employment⁷⁵ where half of the respondents indicated they worked with four or more female attorneys are the federal government and the state and local government. In both cases, there were large increases from the 1990 study: For the federal government, it was a 19% increase and for state and local government, a 24.6% increase.⁷⁶ 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."⁷⁷ 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.⁷⁸

71. The figure was 52.1%. When the number of male attorneys who worked without female colleagues was adjusted to exclude sole practitioners it was at a high 45% in 1990. See Gellis, *supra* note 8, at 944.

72. When the number of male attorneys who worked without female colleagues was adjusted to exclude sole practitioners it was even lower, 27% in 2004. See 2004 INDIANA REPORT, *supra* note 14, at 8.

73. The number increased from 23% of male attorneys who worked with four or more female attorneys in 1990 to 34.2% of male attorneys who worked with four or more female attorneys in 2004. *Id.*

74. The number increased from 43% of female attorneys who worked with four or more female attorneys in 1990 to 50.2% of female attorneys who worked with four or more female attorneys in 2004. *Id.*

75. 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 *id.* at 8 fig.2.

76. *Id.*

77. *Id.* at 51 cmt. 257.

78. *Id.* cmt. 695.

The judiciary was one of the two employment sectors that experienced the largest increase in the presence of four or more female lawyers in the workplace. The increase was marked, from 2% in 1990 to 27% in 2004.⁷⁹ The respondents in private practice firms, who reported the presence of four or more women in the workplace, also experienced an increase, from 10% in 1990 to 38.8% in 2004.⁸⁰

In contrast to the government sector, the public interest/legal services sector saw a marked decline in the presence of four or more female lawyers in the workplace, from 49% in 1990 to 28% in 2004.⁸¹ In 1990, the public interest sector had the highest percentage of attorneys who reported having three or more female colleagues.⁸² In contrast, in 2004, the public interest sector dropped to the lowest percentage.⁸³ Such drastic change warrants further research to provide clarity into this phenomenon.

2. Other Aspects of Female 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 male and female attorneys averaging the same number of work hours.⁸⁴ 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 forty and fifty hours per week.⁸⁵ However, the percentage of women who work those hours has decreased since the 1990 study, when a larger majority (60%) of both men and women reported working between forty and fifty-four hours per week.⁸⁶ Finally, the 2004 data shows that the same percentage (23%) of female and male attorneys report working over fifty-five hours per week.⁸⁷ Thus, despite perceptions to the contrary, the data shows male and female lawyers work the same number of hours.

b. Part-Time Working Schedules

With regard to the percentage of attorneys who work part-time hours,

79. 2004 INDIANA REPORT, *supra* note 14, at 8 fig.2.

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. In 2004, the average number of hours per week worked by female lawyers was forty-four and the average for male lawyers was forty-five. *Id.* at 16.

85. Just over 50% of women and 59% of men surveyed in 2004 work these hours. *Id.*

86. *Id.*

87. *Id.*

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% of women and 8% of men worked part-time,⁸⁸ in 2004 the numbers increased to 17.4% of women and 11.3% of men.⁸⁹ The majority of part-time attorneys were academics, solo practitioners, or public interest attorneys.⁹⁰

Table 2.
Percentage of Women Working Part-Time

	1990	2004
Men	8%	11.3%
Women	15%	17.4%

The distribution of part-time lawyers by age group shows almost half of the women are between the ages of thirty to thirty-nine years old,⁹¹ while almost three-quarters of male part-time attorneys are fifty years old or older. These numbers mean women of childbearing age are working part-time hours while men who are working part-time hours are of retirement age. It appears 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 mean working fewer hours. A 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.”⁹²

c. Perceptions of Working Hours

Although the number of hours worked by most male and female attorneys is similar⁹³ — particularly for full-time attorneys — the data shows over a quarter of male respondents perceive female lawyers do not work as many hours as their male counterparts.⁹⁴ When asked about their perceptions of the number of hours worked by female lawyers, 7.5% of women and 20% of men responded “fair or poor.”⁹⁵ In contrast, half of all

88. See Gellis, *supra* note 8, at 945.

89. See 2004 INDIANA REPORT, *supra* note 14, at 9, 27.

90. See *id.* at 9.

91. These numbers may also be affected by the fact that fewer female attorneys than males fall into the fifty and older age category. Almost half of female respondents of the 2004 survey were under forty years of age. *Id.* at 2.

92. *Id.* at 52 cmt. 307.

93. See *id.* at 16.

94. 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.

95. The numbers are similar to the response to the same question in 1990, where 7% of women and 26% of men chose “fair or poor.” *Id.* at 22.

attorneys who responded chose "good" as their response.⁹⁶ More than two-thirds of women, however, believe that female attorneys work the same number of hours as male attorneys.⁹⁷ Thus, there seems to be a gender disparity in the perceptions of hours worked by female attorneys. As one male respondent candidly wrote, "[m]ost women do not 'succeed' in law because they don't put in the hours. One has to plan on 50-90 hours per week."⁹⁸ Another respondent summarized the view that "[c]lients 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."⁹⁹

3. Financial Compensation: Figures and Satisfaction

The area of financial compensation highlights a gap between men and women that has been notable for years. The 1990 survey found half of female lawyers earned less than \$40,000 per year,¹⁰⁰ while only one in five¹⁰¹ male lawyers did. By 2004, the numbers lowered so that 18.8% of women and 8.8% of men made less than \$40,000 per year.¹⁰² Adjusting for the change in the value of the dollar,¹⁰³ 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% of women and 22.1% of men earned \$59,000 or less.¹⁰⁴ A comparison of these numbers to those of the respondents who earned \$40,000 or less in 1990 shows a persistent salary gap between male and female lawyers.

This salary gap is even more apparent when controlled for a number of years of experience. Male attorneys continue to receive larger financial compensation than female attorneys with the same level of experience. For example, almost three-quarters¹⁰⁵ of the women who have less than four years' practice experience earn \$60,000 or less, while only half of the men¹⁰⁶ 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

96. 2004 INDIANA REPORT, *supra* note 14, at 22.

97. *Id.* at 21.

98. *Id.* at 56 cmt. 564.

99. *Id.* at 48 cmt. 78.

100. The exact figure is 53.1%. *Id.* at 9.

101. The exact figure is 20.6%. *Id.*

102. *Id.* at 10 figs.4a & 4b.

103. A 1990 dollar is worth \$1.45 according to the Consumer Price Index. See Samuel H. Williamson, *Five Ways to Compute the Relative Value of a U.S. Dollar Amount, 1790-2006*, MEASURINGWORTH.COM (2007), <http://measuringworth.com/calculators/uscompare/>.

104. 2004 INDIANA REPORT, *supra* note 14, at 9.

105. The exact figure is 70.9%. *Id.* at 11.

106. The exact figure is 54.7%. *Id.*

or less.¹⁰⁷ Finally, 50% of the women and 18% of the men with ten to fourteen years of experience earn \$60,000 or less.¹⁰⁸

Women's lower compensation 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% of male attorneys work in state and local government.¹⁰⁹ Of those, 22.2% of women and 11.4% of men earn less than \$40,000 per year.¹¹⁰ Although the percentages show an improvement over the numbers from 1990 — when 63% of women and 10% of men employed by state and local government earned less than \$40,000¹¹¹ — they still show pay disparity by gender.

Other than the actual financial compensation percentages, the respondents' satisfaction 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,¹¹² which is up from the 35% of women and 50% of men who were similarly satisfied in 1990.¹¹³

However, the percentage of respondents who were either dissatisfied or very dissatisfied with their financial rewards also increased for all attorneys, from 24.2% of women and 14.2% of men in 1990¹¹⁴ to 31.3% of women and 17.3% of men in 2004.¹¹⁵ 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.¹¹⁶ This decrease in optimism did not translate into widespread negativity, as only 22.5% of women and 17% of men reported being pessimistic about improvement in financial rewards in the next five years.¹¹⁷

107. The exact figures are 46% percent of the women and 23% of men. 2004 INDIANA REPORT, *supra* note 14, at 9.

108. *Id.* at 10 fig.4a & 4b. These percentages include the aggregate total of respondents, 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.

109. *Id.* at 7 tbl.2.

110. *Id.* at 13.

111. See Gellis, *supra* note 8, at 947.

112. The actual figures are 50.2% for women and 61.7% for men. See 2004 INDIANA REPORT, *supra* note 14, at 16.

113. *Id.*

114. *Id.*

115. *Id.*

116. The actual figures are 45% of women and 47.8% of men. See Gellis, *supra* note 8, at 949.

117. See 2004 INDIANA REPORT, *supra* note 14, at 16.

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 compensation had been an obstacle to their success,¹¹⁸ the corresponding number in 2004 for women surpassed half of women, and for men, almost a third.¹¹⁹ Furthermore, for female attorneys, it appears 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 fifty and older age category.¹²⁰

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 female attorneys, 37% of women reported their salaries were worse.¹²¹ When asked to compare themselves to similarly situated male attorneys, in both 1990 and 2004, 30% of women indicated their salaries were lower.¹²² Finally, nearly 40% of women responded that they had been victims of discrimination in pay,¹²³ an increase from 31.7% of women who responded affirmatively to this query in 1990.¹²⁴

The perceptions of the male attorneys are also noteworthy: In 2004, 13% of men reported believing that they earned higher salaries than women, which is a decrease from 20% in 1990.¹²⁵ Close to a third of women and over half of men reported having the same salary as the opposite sex.¹²⁶

E. THE WORK PLACE – ORGANIZATIONAL DYNAMICS

Over 80% of lawyers are somewhat or very satisfied with their current employment, so overall they experience it positively.¹²⁷ For Indiana female lawyers, most workplace organizational dynamics have either remained consistent or experienced improvement since the 1990 study. Yet, there is still room for improvement. For instance, firms still need to address the

118. The actual figures are 48% of women and 27.6% of men. *See Gellis, supra* note 8, at 949.

119. The actual figures are 51.2% of women and 29.3% of men in 2004. *See* 2004 INDIANA REPORT, *supra* note 14, at 16.

120. *Id.* at 16-17.

121. *Id.*

122. *Id.* at 16.

123. *Id.* at 17.

124. *See Gellis, supra* note 8, at 949.

125. *See* 2004 INDIANA REPORT, *supra* note 14, at 17.

126. *Id.* at 16-17.

127. The actual figures are 84.3% of women and 88.2% of men. *Id.* at 15.

low numbers of female partners and the fact that, for female lawyers, their journey to partnerships tend to take longer. Moreover, firms should 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 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 female respondents who worked in law firms were partners while more than two-thirds of male respondents were partners.¹²⁸ In the Indiana 2004 survey, 47.5% of all respondents were partners (21.6% female and 78.4% male).¹²⁹ Further, a 2007 survey commissioned by the State of Indiana Division of State Court Administration found that females comprised 17% of the equity partners at Indiana law firms, meaning those partners who are full-voting members of the firm, receive a percentage of the firm's profits on a regular basis, maintain an ownership interest in the firm, or enjoy similar benefits.¹³⁰ Additionally, of the Indiana law firms that had non-equity partners, meaning those partners who are not full-voting members and do not have an ownership interest, 44% of the non-equity partners were female.¹³¹ Despite the progress seen in the number of female partners, the data shows the number of years women worked prior to partnership was longer in 2004 than 1990, and longer than for men.¹³²

b. Satisfaction with Opportunities

The female respondents' perceptions of the opportunities for advancement evidence 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 1990.¹³³ When compared to their male colleagues, twice as many female attorneys perceived their opportunities for advancement as worse than similarly situated colleagues.¹³⁴ Furthermore, over 30% of women perceived their opportunities for advancement as less than those of men, whereas only

128. See Gellis, *supra* note 8, at 945.

129. See 2004 INDIANA REPORT, *supra* note 14, at 8.

130. THE SURVEY RESEARCH CENTER AT IUPUI, DEMOGRAPHIC SURVEY OF ATTORNEYS IN INDIANA LAW FIRMS 1, 6 (2007) [hereinafter 2007 INDIANA SURVEY].

131. *Id.* at 5.

132. See 2004 INDIANA REPORT, *supra* note 14, at 9 fig.3 (number of years in practice before being made partner).

133. See *id.* at 18.

134. The numbers are 28% of women and 14.4% of men. See *id.*

6.4% of men perceived their opportunities for advancement as less than those of women.¹³⁵

Additionally, almost 40% 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.¹³⁶ There was a small note of optimism when only a third of female respondents forecasted that inadequate opportunities for advancement would continue to be an obstacle to success, an improvement from the 40% of women who did so in 1990.¹³⁷ However, the numbers also showed over one-quarter of women reported being victims of discrimination in promotion.¹³⁸ This represents a slight increase from the 21% of women who reported such an experience in 1990.¹³⁹ Finally, more than a third of women agreed they will never achieve equal status with men,¹⁴⁰ a slight increase from the 30% who concurred in 1990.¹⁴¹

Overall, the figures regarding female lawyers' perceptions of their advancement are somewhat dispiriting; it appears although the number of female partners has increased, female 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.¹⁴²

The study contained questions regarding specific areas that 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, 24% of women feel as though they receive less encouragement than men, as compared to 6.5% of men who feel as though they receive less encouragement than women.¹⁴³ Twice as many women¹⁴⁴ as men are dissatisfied with the feedback they

135. See 2004 INDIANA REPORT, *supra* note 14, at 18.

136. *See id.*

137. *Id.* at 9.

138. The actual number is 27.1%. *See id.* at 19.

139. *Id.* at 18.

140. *See id.*

141. See Gellis, *supra* note 8, at 950.

142. See 2004 INDIANA REPORT, *supra* note 14, at 61 cmt. 792.

143. *See id.* at 21.

144. This figure is almost a quarter of women (23%). *See id.*

receive from their firm or organization.¹⁴⁵ The percentage of women who are dissatisfied with the feedback they receive has not significantly improved since 1990.¹⁴⁶ Furthermore, over 40% of women feel that inadequate feedback is an obstacle to their career.¹⁴⁷

The importance of feedback and the role 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."¹⁴⁸ 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 female respondents indicate that they participate less in management decisions than similarly situated attorneys of the opposite gender, in contrast to the 4.8% of male respondents.¹⁴⁹ More than twice the amount of women than men are dissatisfied with the level of input they have in management decisions.¹⁵⁰

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 in their careers. While the survey did not require respondents to list the law firm committees on which they served, a trend seen in other states finds that men serve on committees that make decisions about the leadership of the firm while women serve on committees aimed at diversity or regarding associates.¹⁵¹ This phenomenon, where women are absent in such important leadership committees as Compensation and Firm Governance,

145. The figure for men is 11.1%. See 2004 INDIANA REPORT, *supra* note 14, at 19.

146. The number is 25%. See *id.*

147. The figure is 41%. See *id.* at 19-20.

148. Cynthia F. Epstein et al., *Report Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession*, 64 FORDHAM L. REV. 291, 362 (1995). See also RIKLEEN, *supra* note 3, at 305 (noting importance of feedback in gender neutral evaluation process for attorneys).

149. See 2004 INDIANA REPORT, *supra* note 14, at 20.

150. The figures are 24.3% of women and 10% of men. See *id.* at 19.

151. N.Y. STATE BAR ASS'N COMM. ON WOMEN IN THE LAW, REPORT TO THE HOUSE OF DELEGATES: GENDER EQUITY IN THE LEGAL PROFESSION – A SURVEY, OBSERVATIONS AND RECOMMENDATIONS 21, 23 (2002), http://www.nysba.org/Content/ContentGroups/Committee_on_Women_in_the_Law1/May2002COMMONWOMENINTHELAWGENDE Requity.pdf.

has been termed a "second glass ceiling."¹⁵²

Female lawyers appear disheartened by the level of respect they receive at their firms. Regarding the level of respect shown to them by their superiors, twice as many women as men expressed dissatisfaction.¹⁵³ Similarly, regarding the level of respect shown to them by colleagues and peers, more women than men are dissatisfied, but in much lower numbers.¹⁵⁴ Nearly one in five female lawyers perceives her situation as worse than similarly situated male lawyers.¹⁵⁵ Regarding improvement in the areas of respect and prestige, twice as many women as men are pessimistic about this possibility.¹⁵⁶ 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 similarity may imply that even if there has been some improvement in the respect and prestige that female attorneys receive at work, women 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 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.¹⁵⁷

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.¹⁵⁸ This majority is virtually the same that responded to the same question in 1990.¹⁵⁹ However, the respondents who do not fit in the majority hold some strong

152. RIKLEEN, *supra* note 3, at 33 (citing ABA COMMISSION ON WOMEN IN THE PROF., EMPOWERMENT AND LEADERSHIP: TRIED AND TRUE METHODS FOR WOMEN LAWYERS 5 (2003)).

153. The figures are 15% of women and 7.2% of men. *See* 2004 INDIANA REPORT, *supra* note 14, at 20.

154. The figures are 7.4% of women and 2.3% of men. *Id.*

155. *See id.* at 21.

156. The figures are 12% of women and 6% of men. *Id.* at 21.

157. *See id.* at 58 cmt. 627.

158. The figures are 69.2% of women and 76.2% of men. *See id.* at 21.

159. The figures are 70% of women and 75% of men. *See* Gellis, *supra* note 8, at 952-53.

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.¹⁶⁰

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% of the men rated female attorneys' overall performance as excellent.¹⁶¹

Regarding their professional relationships, there was some improvement in how women rated themselves. Twice as many men as women reported that male lawyers are better than female lawyers at making contact with clients.¹⁶² This number improved since the 1990 study, when roughly the same number of men and women reported male lawyers were better at contacting clients.¹⁶³ There was also improvement in that the majority of men and women reported that female lawyers were as successful as male lawyers in attracting new clients.¹⁶⁴ However, one in four male attorneys and nearly one in three female attorneys still report that men do better at attracting new clients.¹⁶⁵

It is possible that women's perceived disadvantage in attracting new clients, or "rainmaking,"¹⁶⁶ may be related to the fact that the majority of women do not have mentors. Only 40% of women report having mentors,¹⁶⁷ a decrease from the 47% who did so in 1990.¹⁶⁸ A leading scholar has analyzed the lack of mentoring for female lawyers and concluded:

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 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.¹⁶⁹

160. See 2004 INDIANA REPORT, *supra* note 14, at 55 cmt. 463.

161. See *id.* at 22.

162. The figures are 13.7% of women and 27.4% of men. See *id.*

163. The figures are 32% of women and 39% of men. See Gellis, *supra* note 8, at 952.

164. See 2004 INDIANA REPORT, *supra* note 14, at 22.

165. The figures are 31.2% of women and 25% of men. See *id.*

166. RIKLEEN, *supra* note 3, at 75.

167. See 2004 INDIANA REPORT, *supra* note 14, at 22.

168. See Gellis, *supra* note 8, at 951.

169. DEBORAH L. RHODE, ABA COMM'N ON WOMEN IN THE PROFESSION, THE

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 [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).¹⁷⁰

Finally, with regard to female lawyers' access, the survey asked respondents to identify whether an "old boys' network" exists. Nine out of every ten¹⁷¹ women responded that this type of informal network does exist, and an even larger number of them¹⁷² perceived 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 1990.¹⁷³

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 missy" and asked if she would be arguing a motion, since he mistook the male intern who accompanied her for an attorney.¹⁷⁴ 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.¹⁷⁵

UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION 16 (2001), available at <http://www.abanet.org/ftp/pub/women/unfinishedagenda.pdf> [hereinafter RHODE, UNFINISHED AGENDA]. See also Elizabeth K. McManus, *Intimidation and the Culture of Avoidance: Gender Issues and Mentoring in Law Firm Practices*, 33 FORDHAM URB. L.J. 217, 219, 231 (2005) (describing how the presence or absence of mentors impacts both the potential for success and quality of life for attorneys, especially female attorneys, and recommending that mentoring become a professional obligation); RIKLEEN, *supra* note 3, at 105 (narrating experiences of lack of mentoring for female lawyers).

170. 2004 INDIANA REPORT, *supra* note 14, at 50 cmt. 176.

171. The actual figure is 91%. See *id.* at 22.

172. The actual figure is 94.3%. *Id.* See also *id.* at 57 cmt. 583 ("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.").

173. See Gellis, *supra* note 8, at 952.

174. See 2004 INDIANA REPORT, *supra* note 14, at 57 cmt. 57.

175. *Id.* at 48 cmt. 84.

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 female lawyers are as capable as male lawyers.¹⁷⁶ However, the numbers still show a marked difference in perceptions sharply divided by gender. While 83% of women strongly agree that female lawyers are as capable as male lawyers, only 55% of men do so.¹⁷⁷ While the women's percentage has stayed the same as in 1990, the men's percentage shows a 10% increase from the same response in 1990.¹⁷⁸

The data shows almost twice as many male as female respondents believe women receive favorable treatment because of their gender.¹⁷⁹ In fact, several male respondents commented that the only group that faces discrimination is white males.¹⁸⁰ Reflecting on the past, the majority of respondents agreed that women's situation had improved since they began practicing law, with a noticeable distinction between genders.¹⁸¹

When asked about their perceptions of the sexual discrimination encountered by female lawyers, a minority of male attorneys agreed that female attorneys encounter discrimination. Fewer men thought so in 2004¹⁸² than in 1990.¹⁸³ In the meantime, a majority of women agree that female attorneys encounter discrimination; this number has remained at around 72%.¹⁸⁴

The number of respondents who think women make too much of sexual discrimination has decreased over time. Whereas 20% of women and 30% of men thought women made too much of the issue in 1990,¹⁸⁵ the number dropped to 16.3% of women and 22% of men in 2004.¹⁸⁶ The comments of a female respondent are illustrative of this trend: "We need to get over it. The way has already been paved."¹⁸⁷ Other survey comments from female and male respondents blamed sexual discrimination on women having a "victim's mentality."¹⁸⁸

176. 2004 INDIANA REPORT, *supra* note 14, at 23.

177. *Id.*

178. See Gellis, *supra* note 8, at 953.

179. The figures are 13.4% of women and 24.4% of men. See 2004 INDIANA REPORT, *supra* note 14, at 26-27.

180. See, e.g., *id.* at 61 cmt. 734.

181. The figures are 55.3% of women and 73.4% of men. See *id.* at 27.

182. The figure stands at 32.9% in 2004. See *id.* at 26.

183. The actual number was 43.6% in 1990. See Gellis, *supra* note 8, at 956.

184. See 2004 INDIANA REPORT, *supra* note 14, at 26.

185. See Gellis, *supra* note 8, at 956.

186. See 2004 INDIANA REPORT, *supra* note 14, at 27.

187. See *id.* at 49 cmt. 120.

188. See *id.* at 56 cmt. 551, 58 cmt. 610.

However, the survey results show that a large percentage of women report having experienced specific acts of discrimination.¹⁸⁹ The acts of discrimination surveyed included sexual harassment; discrimination in hiring, promotion, work assignments or pay; verbal abuse; and adverse rulings from a court or agency.¹⁹⁰ The percentages of female lawyers experiencing these forms of discrimination are still high.¹⁹¹ These numbers show the existence of gender-based discrimination in the legal profession, even though the perception is that the situation has improved.

Table 3.
Acts of Discrimination Experience by Women Respondents

	1990	2004
Physical Sexual Harassment	11.4%	10.6%
Verbal Sexual Harassment	40%	41%
Discrimination in Hiring	25.1%	21.3%
Discrimination in Promotion	21%	27.1%
Discrimination in Work Assignment	28.5%	34.1%
Discrimination in Pay	28.5%	39.1%
Verbal Abuse	28.1%	26.7%
Adverse Ruling from Court or Agency	14.1%	10.7%
Other	30.4%	19%

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.”¹⁹² This widespread¹⁹³ 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.¹⁹⁴ Some women commented on their

189. See 2004 INDIANA REPORT, *supra* note 14, at 24 fig.11.

190. *Id.*

191. *Id.*

192. RHODE, UNFINISHED AGENDA, *supra* note 169, at 14.

193. The following comment from a female respondent is telling: “Female attorneys are so prevalent that gender issues fade over time.” 2004 INDIANA REPORT, *supra* note 14, at 61 cmt. 731.

194. In fact, 67.7% of respondents named employers/supervisors and 40.6% named opposing lawyers. 2004 INDIANA REPORT, *supra* note 14, at 24. These numbers were the same in 1990, with employers/supervisors indicated as the source of harassment by 60% of females and opposing counsel similarly indicated by 53% of female respondents. See Gellis, *supra* note 8, at 954.

experiences of discrimination at the hands of women or their view that discrimination continues only because of women.¹⁹⁵ These comments are puzzling. The survey did not query the gender of responsible parties of the discriminatory acts; this in an 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.¹⁹⁶ It may be, even if the practice is 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 care-giving,¹⁹⁷ 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 respondents who were single in 2004 stood at 16.3% of women and 5.6% of men,¹⁹⁸ whereas in 1990, the comparable numbers were 20% of women and 6% of men.¹⁹⁹ More women were divorced in 2004 than in 1990.²⁰⁰ The biggest change in these statistics is that more women are having children while maintaining legal careers. While the percentage of male attorneys who are parents has not changed,²⁰¹ there has been a 10% increase in the percentage of female attorneys who are parents.²⁰² Furthermore, there has been a decrease in the percentage of women who have chosen not to have children because of their career²⁰³ and of those who delayed their careers in order to have children.²⁰⁴

Notwithstanding the above, there was very slight increase in the percentage of women who delayed having children in order to advance

195. See, e.g., 2004 INDIANA REPORT, *supra* note 14, at 55 cmt. 462.

196. *Id.* at 25 fig.12.

197. Laura T. Kessler, *Is there Agency in Dependency? Expanding the Feminist Justifications for Restructuring Wage Work*, in FEMINISM CONFRONTS HOMO ECONOMICUS 373, 373 (Terence Dougherty & Martha Fineman eds., 2005) (describing female care giving role).

198. See 2004 INDIANA REPORT, *supra* note 14, at 28.

199. See Gellis, *supra* note 8, at 959.

200. The figures are 10.4% in 2004 and 8.3% in 1990. 2004 INDIANA REPORT, *supra* note 14, at 28; Gellis, *supra* note 8, at 959.

201. The numbers are 81% in 1990 and 80.4% in 2004. See Gellis, *supra* note 8 at 959; 2004 INDIANA REPORT, *supra* note 14, at 28.

202. The numbers increased from 53% in 1990 to 62.8% in 2004. See Gellis, *supra* note 8, at 959; 2004 INDIANA REPORT, *supra* note 14, at 28.

203. The numbers decreased from 15% in 1990 to 8% in 2004. See Gellis, *supra* note 8, at 959; 2004 INDIANA REPORT, *supra* note 14, at 28.

204. The numbers decreased from 30% in 1990 to 13% in 2004. See Gellis, *supra* note 8, at 959; 2004 INDIANA REPORT, *supra* note 14, at 28 .

their careers — from 36% in 1990 to 38.1% in 2004.²⁰⁵ It is hard to predict whether this slight increase represents a trend; further research is warranted in this area. Scholars have suggested that 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.²⁰⁶ Some have found “[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.”²⁰⁷

Most of the married respondents have partners who work outside of the home either full or part-time.²⁰⁸ The vast majority of the female respondents indicated that they were responsible for 50% or more of their family responsibilities.²⁰⁹ Women also significantly outnumber men in taking care of 75% to 100% of the family responsibilities.²¹⁰ Finally, the percentage of women who reported their partners shared in less than half of the family responsibilities increased very slightly.²¹¹ This is another area where further research is needed to determine if this is an emerging trend. Regarding the realities of work/family balance for female 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;

205. See Gellis, *supra* note 8, at 959; 2004 INDIANA REPORT, *supra* note 14, at 28.

206. See HOLLY ENGLISH, GENDER ON TRIAL 220-52 (2003); RIKLEEN, *supra* note 3, at 115-31; Epstein et al., *supra* note 148; Rebecca Korzec, *Working on the “Mommy-Track”*: Motherhood and Women Lawyers, 8 HASTINGS WOMEN'S L.J. 117 (1997); Nicole Buonocore Porter, *Re-Defining Superwoman: An Essay on Overcoming the “Maternal Wall” in the Legal Workplace*, 13 DUKE J. GENDER L. & POL'Y 55 (2006); Joan C. Williams & Nancy Segal, *Beyond the Maternal Wall: Relief for Family Caregivers Who Are Discriminated Against on the Job*, 26 HARV. WOMEN'S L.J. 77 (2003).

207. RIKLEEN, *supra* note 3, at 116.

208. The numbers are 66.7% of women and 67% of men. See 2004 INDIANA REPORT, *supra* note 14, at 28.

209. The number is 94.2%. *Id.* at 28-29.

210. The figures are 28.3% of women and only 2.7% of men. *Id.* at 28.

211. The numbers increased from 60% in 1990 to 62% in 2004. Gellis, *supra* note 8, at 959; 2004 INDIANA REPORT, *supra* note 14, at 28.

or kids take the BRUNT of being short-changed; or a Dad who cooks/cleans/does homework and drives.²¹²

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 are available in the majority of legal work environments.²¹³ 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.²¹⁴

Despite the increased availability of part-time opportunities, the 2004 survey revealed an increase in the percentage of both female and male respondents reporting the lack of part-time employment as an obstacle to their success. Whereas for 36% of women and 10% of men the absence of part-time work was an obstacle in 1990, by 2004 the numbers increased to 43% of women and 11.6% of men.²¹⁵ The fact that more respondents have children could account for the increase in these percentages.

Also despite the improvement in the availability of part-time work schedules, the fact that 43.6% of women and 12.4% of men expressed concern that the lack of part-time schedules will continue to be an obstacle in the future shows some pessimism.²¹⁶ This pessimism may be tied to the billable hour requirement used at most private law firms. As one of the respondents commented, “[w]omen 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.”²¹⁷

The effectiveness of the billable hour model and its success at evaluating performance has been the object of considerable study and is beyond the scope of this article.²¹⁸ 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 comments expressing clear views for and against part-time scheduling.²¹⁹ Some of the comments voiced support for part-time scheduling and some

212. 2004 INDIANA REPORT, *supra* note 14, at 61 cmt. 731.

213. In 2004, 54.5% of women and 49.2% of men reported that the organization that they work for offered some type of part-time employment. *Id.* at 61.

214. *See* Gellis, *supra* note 8, at 959.

215. *Id.* at 958; *see also* 2004 INDIANA REPORT, *supra* note 14, at 27.

216. *See* Gellis, *supra* note 8, at 958.

217. *See* 2004 INDIANA REPORT, *supra* note 14, at 48 cmt. 96.

218. *See* RIKLEEN, *supra* note 3 at 53-74; AMERICAN BAR ASSOCIATION, ABA COMMISSION ON BILLABLE HOURS REPORT 1, 4-11 (2002), *available at* <http://www.abanet.org/careercounsel/billable/toolkit/bhcomplete.pdf>.

219. *Cf.* 2004 INDIANA REPORT, *supra* note 14, at 59 cmt. 641, 48 cmt. 78.

contained personal accounts of how part-time scheduling accommodated their families' needs.²²⁰

However, there were some pointed comments about the unfairness of having clients and full-time lawyers work alongside with part-time lawyers.²²¹ 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."²²² Yet there have been recent reports and research suggesting that these issues are not "women's work," i.e., both female and male lawyers want a balanced lifestyle, one which includes family.²²³ Despite these views, one respondent succinctly observed, "[i]n 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."²²⁴

One family-friendly adjustment a large number of organizations have made is the availability of maternity leave. A large majority of the respondents' workplaces offer some type of maternity leave.²²⁵ This development stands in contrast to 1990, when a minority of legal organizations offered informal maternity leave.²²⁶ This change may have been in response to the enactment of the Family and Medical Leave Act (FMLA) two years after the first survey.²²⁷

While most organizations offer family leave for mothers, only a quarter of organizations offer paternity leave.²²⁸ This type of inequity furthers the stereotypes about the roles 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.²²⁹

220. See 2004 INDIANA REPORT, *supra* note 14, at 59 cmt. 641.

221. *Id.* at 48 cmt. 78.

222. *Id.* at 52 cmt. 293.

223. See Shepard, *supra* note 46, at 977; ENGLISH, *supra* note 206, at 238; Deborah Rhode, *Balanced Lives: Changing the Culture of Legal Practice*, ABA Comm'n on Women in the Profession (2001), available at <http://womenlaw.stanford.edu/balanced.lives.pdf> [hereinafter Rhode, *Balanced Lives*]; Keith Cunningham, *Father Time: Flexible Work Arrangements and the Law Firm's Failure of the Family*, 53 STAN. L. REV. 967 (2001).

224. 2004 INDIANA REPORT, *supra* note 14, at 58 cmt. 601.

225. The number is 88%. *Id.* at 29.

226. See Gellis, *supra* note 8, at 959.

227. Family and Medical Leave Act of 1993, 29 U.S.C. § 2612 (2001) (allowing eligible employees of certain employers to take up to twelve weeks of leave for the birth or adoption of a child).

228. See 2004 INDIANA REPORT, *supra* note 14, at 29.

229. ENGLISH, *supra* note 206, at 238.

Finally, for parent-attorneys — but mostly for females — the availability of day care is a cause for concern. Thirty percent of the women and 6.3% of men reported day care facility concerns were an obstacle to their success.²³⁰ Furthermore, respondents of both genders found that family demands had impeded their career success.²³¹ A majority of female respondents predicted family demands would continue to be an obstacle to their success.²³² A comment from a male respondent offered advice to attorneys having trouble balancing work and family demands:

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.²³³

IV. INDIANA'S FINDINGS COMPARED TO OTHER STATES' AND NATIONAL FINDINGS

Because the status of women in the legal profession is a concern nationwide, other jurisdictions such as Colorado,²³⁴ Maryland,²³⁵ New Hampshire,²³⁶ New York,²³⁷ Texas,²³⁸ and Washington²³⁹ have undertaken

230. See 2004 INDIANA REPORT, *supra* note 14, at 28.

231. The numbers are 50.6% of women and 31.9% of men. *Id.* at 27.

232. The number is 51.8%. *Id.*

233. *Id.* at 52 cmt. 285.

234. COLORADO BAR ASSOCIATION 2000 ECONOMIC SURVEY (2001) <http://www.cobar.org/members/economicsurvey2000.pdf> [hereinafter COLORADO BAR REPORT]; Nancy Reichman & Joyce S. Sterling, *Gender Penalties Revisited*, in COLORADO WOMEN'S BAR FOUND. (2004), [hereinafter Reichman & Sterling, *Gender Penalties*]; Nancy J. Reichman & Joyce S. Sterling, *Sticky Floors, Broken Steps, and Concrete Ceilings in Legal Careers*, 14 TEX. J. WOMEN & L. 27 (2004) (comparing data about women in Colorado's legal profession from 1993 to 2000) [hereinafter Reichman & Sterling, *Sticky Floors*].

235. MARYLAND COMMISSION SELECT COMMITTEE ON GENDER EQUALITY, RETROSPECTIVE REPORT (2001), <http://www.msba.org/departments/commpubl/publications/CompleteGBProject.pdf>.

236. NEW HAMPSHIRE BAR ASSOCIATION COMMITTEE ON GENDER EQUALITY, GENDER EQUALITY IN THE NEW HAMPSHIRE COURTS AND LEGAL PROFESSION — A SURVEY (2005), <http://www.nhbar.org/publications/archives/display-journal-issue.asp?id=284> [hereinafter NEW HAMPSHIRE BAR REPORT].

237. NEW YORK STATE BAR ASSOCIATION COMMITTEE ON WOMEN IN THE LAW, GENDER EQUITY IN THE LEGAL PROFESSION: A SURVEY, OBSERVATIONS, AND RECOMMENDATIONS (2001), <http://www.nysba.org/Content/ContentGroups/News1/Reports3/womeninlawreport-recs.pdf> [hereinafter NEW YORK BAR REPORT].

238. NILS GREGER OLSSON & DUSTIN KIM, STATE BAR OF TEXAS, ANNUAL REPORT ON THE STATUS OF WOMEN AND RACIAL/ETHNIC MINORITIES IN THE STATE BAR OF TEXAS, (2004-05) <http://www.texasbar.com/Template.cfm?Section=reports&CONTENTID=12082&TEMPLATE=/ContentManagement/ContentDisplay.cfm> [hereinafter TEXAS BAR REPORT].

239. NORTHWEST RESEARCH GROUP, INC. FOR THE GLASS CEILING TASK FORCE, FINAL REPORT, 2001 SELF-AUDIT FOR GENDER AND RACIAL EQUITY: A SURVEY OF WASHINGTON LAW FIRMS (2001), <http://www.wsba.org/info/glassceiling.pdf> [hereinafter

studies on this topic. One federal court of appeals has studied the issue as well.²⁴⁰ All of the above have issued reports akin to the 2004 Indiana Bar Report. Several have formed task forces to study gender equality in the courtroom.²⁴¹ The task forces have also examined other areas regarding women in the law. These areas 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; and the treatment of female personnel in court administration.

At the national level, different organizations have collected and studied country-wide statistics regarding women in the legal profession.²⁴² 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 female lawyers fare in Indiana and what trends are emerging for female lawyers throughout the country.

Included among the trends that this Part discusses in more detail are the demographic rise of female 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 female attorneys in the workplace.

A. DEMOGRAPHICS

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 attorneys²⁴³ nationwide, 29.4% are women.²⁴⁴ In Indiana, 31% of the bar is comprised of female attorneys.²⁴⁵

WASHINGTON SAGE REPORT].

240. John C. Caghenour, *The Effects of Gender in the Federal Courts: The Final Report of the Ninth Circuit Gender Bias Task Force*, 67 S. CAL. L. REV. 745 (1994).

241. William E. Martin & Peter N. Thompson, *Removing Bias from Minnesota Justice System*, BENCH AND BAR OF MINNESOTA NO. 7 (2002), <http://www2.mnbar.org/benchandbar/2002/aug02/aug%20removing%20bias.htm>; STATE BAR OF NEW MEXICO COMMITTEE ON WOMEN AND THE LEGAL PROFESSION AND THE NEW MEXICO SUPREME COURT, *GENDER EQUALITY IN THE COURTS* (2005), http://www.nmbar.org/Template.cfm?Section=Gender_Equality_in_the_Courts; PENNSYLVANIA SUPREME COURT, *GENDER BIAS IN JURY SELECTION* (2001), <http://www.courts.state.pa.us/Index/Supreme/BiasCmte/FinalReport.ch3.pdf>.

242. CATALYST, *WOMEN IN THE LAW: MAKING THE CASE 1* (2001) available at http://www.catalystwomen.org/knowledge/titles/title.php?page=lead_wlmkcase_01; THE NALP FOUNDATION, *KEEPING THE KEEPERS II: MOBILITY & MANAGEMENT OF ASSOCIATES. ENTRY-LEVEL AND LATERAL HIRING AND ATTRITION 1998-2003* (2003); RHODE, *UNFINISHED AGENDA*, *supra* note 169, at 5.

243. ABA Commission, *supra* note 3, at 1 (citing American Bar Association Marketing Research Department, *National Lawyer Population by State 1* (2005), <http://www.abanet.org/marketresearch/2005nbrolawyersbystate.pdf>).

244. U.S. Dept. of Labor, Bureau of Labor Statistics, *Household Data Annual Averages 222 tbl.11* (2005), <http://www.bls.gov/cps/cpsaat11.pdf>.

245. *See* 2004 INDIANA REPORT, *supra* note 14, at 5.

Although women comprise about half of those receiving law degrees in the country,²⁴⁶ 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.²⁴⁷ In New York, two-thirds of female lawyers and only one-third of male attorneys are forty-four or younger.²⁴⁸ In Texas, the median age of attorneys is forty-one for women and forty-eight for men.²⁴⁹ Texas is nearly the same as Indiana, where the median age for women is forty and for men is forty-nine.²⁵⁰ Likewise, in Colorado the average female attorney is forty-one years old and has ten years of practice experience.²⁵¹ The practice experience that an average female attorney has in other states is comparable. In Texas it is eleven years²⁵² and in New York, it is twelve and a half years.²⁵³ Similarly, in Indiana, we see a trend in that more than half of the female attorneys have fourteen years or less of experience.²⁵⁴

B. EMPLOYMENT FIGURES: EXAMINATION OF KEY ASPECTS

1. Types of Employment and Hours

The national data shows 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,²⁵⁵ the majority of women in Indiana are in private practice.²⁵⁶

Differences emerge when looking at certain areas of practice outside of private practice. More Indiana female lawyers work in the government²⁵⁷

246. In 2004, 48.8% of the law degrees awarded nationally went to women. See American Bar Association Section of Legal Education and Admission to the Bar, *Legal Education Statistics J.D. and LL.B Degrees Awarded 1981-2004* (2005), <http://www.abanet.org/legaled/statistics/charts/jdandllbdegrees.pdf>.

247. The actual numbers are 49.4% of women and 26.4% of men. 2004 INDIANA REPORT, *supra* note 14, at 5.

248. Actual figures are 60% of the women and 35% of the men. NEW YORK BAR REPORT, *supra* note 237, at 6.

249. TEXAS BAR REPORT, *supra* note 238, at 9.

250. Jacobs, *supra* note 58.

251. COLORADO BAR REPORT, *supra* note 234, at 5.

252. TEXAS BAR REPORT, *supra* note 238, at 9.

253. NEW YORK BAR REPORT, *supra* note 237, at 14.

254. The number is 65%. 2004 INDIANA REPORT, *supra* note 14, at 6.

255. The national data shows that 56% of recently graduated female attorneys work in private practice. ABA Commission, *supra* note 3, at 2. Other nationwide surveys have put this figure at a higher 70%. See ABA Division for Media Relations and Public Affairs, ABA FACTS ABOUT WOMEN AND THE LAW 4 (1998), available at <http://web.archive.org/web/20051229204610/http://www.abanet.org/media/factbooks/womenlaw.pdf> at 4.

256. In Indiana, the comparable number was 54%. 2004 INDIANA REPORT, *supra* note 14, at 7. This figure includes solo practice. *Id.*

257. Over a quarter (26.8%) of female attorneys in Indiana work for the government. *Id.* This is more than twice the 11.9% found in data provided by the ABA. ABA Commission, *supra* note 3, at 2.

and the legal academy²⁵⁸ than their counterparts. On the other hand, fewer Indiana female lawyers work in the corporate²⁵⁹ sector and in public interest²⁶⁰ as compared to the national data.

Regarding the number of hours per week 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 fifty hours,²⁶¹ Indiana's median work hours were forty-four for women and forty-five for men.²⁶² In fact, in Indiana, 50.8% of women and 59% of men actually worked between forty and fifty-four hours per week.²⁶³

As with other jurisdictions, more women than men work part-time hours in Indiana. Nationwide, the data indicates one in three female attorneys and one in ten male attorneys have worked part-time.²⁶⁴ In Indiana, the data shows 17.4% of women and 11.3% of men work part-time.²⁶⁵ In Colorado, the comparable data is 18% of female private practitioners and 13% of male private practitioners work part-time.²⁶⁶

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 national number,²⁶⁷ where 70% of both men and women report having difficulty balancing the demands of work with their personal lives.²⁶⁸ For example, in New York, half of the female attorneys and about four out of every ten male attorneys report that they do not allocate enough time to their personal lives.²⁶⁹ These numbers show, with regard to balancing work and life, that Indiana attorneys appear to have an advantage over their counterparts in other parts of the country.

258. The number of Indiana's women in academic legal employment is 4%. See 2004 INDIANA REPORT, *supra* note 14, at 7. This number is more than double the national average of 1.7%. See ABA Commission, *supra* note 3, at 2.

259. Indiana has fewer women working as corporate counsel. See 2004 INDIANA REPORT, *supra* note 14, at 7. While in Indiana the number is 7%, the national figure is 10%. See ABA Commission, *supra* note 3, at 2-3. The national figure for women general counsel is 15.4%.

260. The number of women employed in public interest in Indiana is 4.8%. The comparable national figure is 6.1%. See ABA Commission, *supra* note 3, at 2.

261. The NALP Foundation and the American Bar Foundation, *After the JD: First Results of a National Study of Legal Careers* 33 (2004), available at http://www.nalpfoundation.org/webmodules/articles/articlefiles/87-After_JD_2004_web.pdf [hereinafter *After the JD*].

262. See 2004 INDIANA REPORT, *supra* note 14, at 16.

263. *Id.*

264. The actual data is 34% women and 9% men. CATALYST, *supra* note 242, at 19.

265. 2004 INDIANA REPORT, *supra* note 14, at 9.

266. COLORADO BAR REPORT, *supra* note 234, at 7.

267. The actual figures are 35.6% of women and 22.8% of men. 2004 INDIANA REPORT, *supra* note 14, at 15.

268. CATALYST, *supra* note 242, at 40.

269. NEW YORK BAR REPORT, *supra* note 237, at 41.

2. Financial Compensation: Figures and Perceptions

It is no aberration that the survey found pay disparity between male and female lawyers in Indiana. This is a nationwide phenomenon that has been widely identified by task forces and scholars alike.²⁷⁰ Because 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.²⁷¹ By comparison, national studies found the median weekly income of female attorneys in 2004 was 73.4% of the income earned by male attorneys.²⁷²

It may appear this gender-based salary disparity trend is tied to the younger female lawyers in the workforce, but the numbers belie this view. A nationwide study of recently admitted lawyers found the median annual salary to be \$66,000 for women and \$80,000 for men in 2004.²⁷³ 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 thirty-six years old, the median salary nationally for female attorneys in 2000 was \$20,000 less than for their male counterparts.²⁷⁴

Other states have found similar pay disparities between men and women in the legal profession. In Washington, men comprise 77% of all lawyers receiving the top 25% of monetary compensation at law firms.²⁷⁵ A 2002 study of Michigan attorneys found the median income for female attorneys was \$27,000 lower than the median income of male attorneys.²⁷⁶

270. 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 (2006), available at <http://www.abanet.org/nawl/docs/NAWIFINALPUBLICATION10-25-06SURVEYREPORT.pdf> [hereinafter NAWL 2006 Survey]. See also Mary C. Noonan & 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).

271. The figures are 60% men and 78% of the women. 2004 INDIANA REPORT, *supra* note 14, at 10 fig.4b.

272. See U.S. DEPT. 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 51, <http://www.bls.gov/cps/wlf-table18-2005.pdf> (indicating that the weekly median salary for female attorneys was \$1255 and for male attorneys was \$1710).

273. *After the JD*, *supra* note 261, at 60.

274. ABA Young Lawyers Division Career Satisfaction 2000 Survey 34, http://www.abanet.org/yld/satisfaction_800.doc (2000) [hereinafter ABA YLD Survey]. The actual median salaries were \$50,000 to \$59,999 for female attorneys and for male attorneys it was \$70,000 to \$79,999. *Id.*

275. WASHINGTON SAGE REPORT, *supra* note 239, at 9, 24.

276. Eric Freedman, *Pay Gap Narrows for Black Lawyers, Remains Wide for*

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,²⁷⁷ the numbers are lower than in New York, where a greater majority are somewhat or very satisfied with the financial remuneration for the work they do.²⁷⁸ Finally, it is worth noting that female lawyers in Indiana are more concentrated in places of employment where the pay is lowest, for example, state and local government.²⁷⁹ The large percentage of those making \$20,000 to \$40,000 a year in low paid legal employment is startling in comparison to those making a similar figure in private law practice.²⁸⁰ Thus, it is evident that financial compensation is one area where concerted efforts are necessary to bring the genders toward full equality in the legal workplace.

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.²⁸¹ 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.²⁸² For example, in Indiana, despite the 2007 survey reporting roughly 50% of its law firms having women in key positions,²⁸³ such as equity or non-equity partners, women only comprise about 17% of the equity partners.²⁸⁴ At private law firms, female lawyers are not reaching the upper levels of law firm management, as evidenced by their partnership numbers. In Indiana, less

Women, CAPITAL NEWS SERVICE (Dec. 5, 2003), http://www.cns.jrn.msu.edu/articles/2003_1205/LAWYERS.HTML. The median salary for male attorneys was \$92,000 while for female attorneys it was \$65,000. *Id.*

277. The numbers are 50.2% of women and 61.7% of men. 2004 INDIANA REPORT, *supra* note 14, at 16.

278. The actual figures are, on average, 65% of female attorneys and 73% of male attorneys. NEW YORK BAR REPORT, *supra* note 237, at 33.

279. *See supra* note 56 and accompanying text.

280. The numbers are 43% of female attorneys versus 6% of male attorneys who earn these amounts. 2004 INDIANA REPORT, *supra* note 14, at 11.

281. *See* RIKLEEN, *supra* note 3. *See also* ABA Commission, *supra* note 3.

282. *See* NAWL 2006 Survey, *supra* note 270, at 1 (stating that most recent nationwide survey shows that women are best represented in junior equity partnership, where they are at one in four, compared to one out of six equity partners). *See also* UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, DIVERSITY IN LAW FIRM 10 (2003) (noting that employment of females at large law firms has not kept pace with law degrees obtained by females or the employment of female attorneys in the general work force).

283. 2007 INDIANA SURVEY, *supra* note 130, at 4.

284. *Id.* at 5.

than half of the 2004 survey respondents indicated they were partners at firms and of those, 21.6% were women.²⁸⁵ Moreover, a 2002 survey found that of the total 308 partners at private law firms in the city of Indianapolis, only 17% are women.²⁸⁶ This trend of low numbers of female partners appears not only in Indiana, but nationwide.

Nationwide data shows 17.1% of partners in private law firms are women.²⁸⁷ The American Bar Foundation, in studying this phenomenon, has found “the most pervasive underrepresentation [sic] of female lawyers . . . exist[s] among partners in law firms[, since] only . . . 60% as many female lawyers were partners in law firms . . . as would have been expected had women been fully represented among partners.”²⁸⁸ A recent survey of University of Michigan Law School graduates confirms 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.²⁸⁹ 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 of the equity partners.²⁹⁰

b. Opportunities for Advancement

With this backdrop, it is not unexpected to find that female 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.²⁹¹ 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 female attorneys indicated that there has been adequate potential for advancement/professional development in their careers.²⁹² Both Indiana and New York stand in stark contrast to nationwide figures. Nationally, the figures for attorney dissatisfaction with their opportunities

285. The respondents who identified as partners comprised 47.5% of the respondents. *See id.* at 8. *Cf. supra* note 149.

286. Press Release, NALP, Presence of Women and Attorneys of Color in Large Law Firms Continues to Rise Slowly but Steadily (Oct. 3, 2002), <http://www.nalp.org/press/details.php?id=18>.

287. ABA Commission, *supra* note 3, at 2.

288. RHODE, UNFINISHED AGENDA, *supra* note 169, at 23 (quoting Kathleen E. Hull & Robert Nelson, *Divergent Paths: Gender Differences in the Careers of Urban Lawyers*, 10 RESEARCHING L. 1, 14 (1999)).

289. Noonan & Corcoran, *supra* note 270, at 140.

290. The female associates were 47% while the equity partners were 19%. WASHINGTON SAGE REPORT, *supra* note 239, at 18.

291. 2004 INDIANA REPORT, *supra* note 14, at 18.

292. The actual figure, on average, was 77% of female attorneys. NEW YORK BAR REPORT, *supra* note 237, at 34.

for advancement show 59% of white female attorneys and 70% of female minority attorneys are dissatisfied with their opportunities for advancement, compared to 49% of white male attorneys.²⁹³

c. Input into Management Decisions

Female lawyers in Indiana are also on par with the other female 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 reports dissatisfaction.²⁹⁴ Research on female lawyers serving on key law firm committees in Colorado revealed their experiences of being excluded from firm decision-making processes.²⁹⁵ For example, respondents described occasions when they would attend meetings to discuss particular matters and, upon their arrival, find that the matters had been resolved "without their input or consultation."²⁹⁶

d. Respect

On a related note, female lawyers are dissatisfied with the respect and treatment they are afforded at firms. In Indiana, 15% of female attorneys expressed dissatisfaction with the respect shown to them by superiors and nearly 20% indicated their situation regarding respect was worse than their male counterparts.²⁹⁷ In New York, over half of the female attorneys and a third of the male attorneys believed that female attorneys are accorded less respect than male attorneys.²⁹⁸ When asked if female attorneys receive condescending treatment by male attorneys, 13.8% of female attorneys from Indiana²⁹⁹ and 70% of the female attorneys in New York responded in the affirmative.³⁰⁰ Close to 12% of female attorneys in Indiana³⁰¹ and 64% of female attorneys from New York indicated they had experienced or witnessed female lawyers receiving less respect than male lawyers.³⁰² Similarly, in New Hampshire, two-thirds of attorneys believe gender has the most significant impact on how other attorneys treat each other and how they are treated at their law firms.³⁰³ These findings show a trend in which female attorneys experience differential treatment as legal professionals based on their gender.

293. CATALYST, *supra* note 242, at 14-15.

294. The actual figures are 24.3% of female attorneys and 10% of male attorneys. 2004 INDIANA REPORT, *supra* note 14, at 19.

295. Reichman & Sterling, *Gender Penalties*, *supra* note 234, at 44-45.

296. *Id.* at 44.

297. 2004 INDIANA REPORT, *supra* note 14, at 21.

298. The figures are 64% of women and 34% of men. NEW YORK BAR REPORT, *supra* note 237, at 31.

299. 2004 INDIANA REPORT, *supra* note 14, at 26.

300. NEW YORK BAR REPORT, *supra* note 237, at 31.

301. 2004 INDIANA REPORT, *supra* note 14, at 26.

302. NEW YORK BAR REPORT, *supra* note 237, at 31.

303. NEW HAMPSHIRE BAR REPORT, *supra* note 236.

e. Perceptions

Another area where female lawyers experience differential treatment is in the perception of their professional commitment and performance. Scholars have identified the causes for this phenomenon and have 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 gendered world, even when there is no empirical evidence to support that assumption."³⁰⁴ Recent Indiana data demonstrates this phenomenon. While approximately 75% of the attorney respondents in the Indiana 2004 survey believe female lawyers have the same level of professional commitment as male lawyers,³⁰⁵ nearly 20% of male attorneys believe men have a higher sense of professional commitment.³⁰⁶

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 female attorneys have to work harder than male attorneys to achieve the same results.³⁰⁷ These views 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."³⁰⁸

The difference in perception is evident in the ways in which the overall performance of female attorneys in Indiana is assessed. Female attorneys were rated as excellent in their overall performance by two-thirds of female attorneys and nearly half of the male attorneys.³⁰⁹ 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."³¹⁰ For example, in New York, one quarter of female attorneys and only four in ten male attorneys indicated that the work of female lawyers is more scrutinized.³¹¹ Thus, this is yet another area in which women experience disparity in their experiences as legal professionals and which needs further analysis.

304. Reichman & Sterling, *Gender Penalties*, *supra* note 234, at 50-51.

305. The actual figures are 69.2% of women and 76.2% of men. 2004 INDIANA REPORT, *supra* note 14, at 21.

306. *Id.*

307. The actual figures are 44% of women and 9% of men. NEW YORK BAR REPORT, *supra* note 237, at 27.

308. ENGLISH, *supra* note 206, at 89.

309. 2004 INDIANA REPORT, *supra* note 14, at 22.

310. RHODE, UNFINISHED AGENDA, *supra* note 169, at 15 (citing Hope Viner Samborn, *Higher Hurdles for Women*, 86 A.B.A. J. 30, 31 (2000) (reporting 57%)).

311. The actual figures are 25% of women and 4% of men. NEW YORK BAR REPORT, *supra* note 237, at 27.

f. Client Relationships

Another aspect of the experience of female 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,"³¹² this view no longer appears to be validated by the recent data. For example, a majority of both male and female lawyer respondents in Indiana believes women are as successful as men in making contact with current clients and attracting new clients.³¹³ Yet twice as many male as female respondents believe that men are better at making contacts with current clients³¹⁴ and more women than men believe that men are better at attracting new clients.³¹⁵

While the perception of female 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 a large majority of attorneys view the opportunities for direct client contact as being equal for lawyers of both genders.³¹⁶ However, three times as many female as male attorneys believe female lawyers had difficulty getting access to important clients because of the prejudicial attitudes of male managers.³¹⁷

g. 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."³¹⁸ Thus, mentoring is a key component to an attorney's advancement in a law firm environment.

While mentoring is generally available³¹⁹ to men and women, it is not equally accessible across gender and ethnicity. The available data shows

312. Epstein et al., *supra* note 148, at 302-03.

313. 2004 INDIANA REPORT, *supra* note 14, at 22.

314. The actual figures are 13.7% of female respondents and 27.4% of male respondents. *Id.* at 21.

315. The actual figures are 31.2% of women and 25% of men. *Id.* at 21.

316. The actual figures are 85% of female attorneys and 97% of male attorneys. NEW YORK BAR REPORT, *supra* note 237, at 28.

317. The actual figures are 36% of women and 10% of men. *Id.* at 27.

318. Epstein et al., *supra* note 148, at 343.

319. WASHINGTON SAGE REPORT, *supra* note 239, at 59. A study of private law firms in Washington found that three-quarters of firms have mentoring programs, which includes the 58% that have informal programs and 16% that have formal programs. *Id.*

that nationwide, less than half of white attorneys of both genders and nearly one-third of female minority attorneys are extremely or very satisfied with the availability of mentors.³²⁰ The data in Indiana shows more women than men report having mentors.³²¹ It is possible that fewer men in Indiana have mentors because they rely on informal mentoring, or 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 female respondents and a majority of male respondents believe the “old boys’ network” continues to exist,³²² and virtually all of these female respondents believe such a network assists male attorneys more than it does female attorneys.³²³ One reason for this may be the fact that more men than women are partners and are more likely to take young colleagues under their wing with whom they identify, and so informal relationships tend to favor male associates.³²⁴ 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 through 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.

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

2. Discrimination, Including Sexual Harassment

As indicated earlier,³²⁵ respondents of the 2004 Indiana survey believed gender discrimination was a problem of the past. The reality is otherwise, as women continue to experience discrimination despite formal attempts to eradicate discrimination from the workplace of the legal profession. Formal examples abound. In Minnesota, over 90% of law firms have written anti-discrimination policies that include gender discrimination,³²⁶

320. CATALYST, *supra* note 242, at 14-15 (showing 43% of white attorneys of both genders and 31% of female attorneys of color).

321. 2004 INDIANA REPORT, *supra* note 14, at 20. The figures are 40% of women and 28% of men.

322. The figures are 91% of women and 55% of men. *Id.* at 22.

323. The figure is 94.3%. *Id.*

324. RIKLEEN, *supra* note 3, at 105 (citing SUZANNE NOSSEL & ELIZABETH WESTFALL, PRESUMED EQUAL: WHAT AMERICA’S TOP WOMEN LAWYERS REALLY THINK ABOUT THEIR FIRMS xviii (1998)).

325. *See supra* notes 185-88 and accompanying text.

326. The actual figure was 92% of Minnesota firms. MINNESOTA STATE BAR ASSOCIATION, WOMEN IN THE LEGAL PROFESSION COMMITTEE, SELF-AUDIT FOR GENDER EQUITY SURVEY OF PRIVATE LAW FIRMS 1995-2000 18 (2002), <http://www2.mnbar.org/committees/women-in-profession/sage-survey-private.pdf> [hereinafter MINNESOTA SAGE REPORT].

and in Washington state, over half of law firms indicated they had written policies regarding gender discrimination or sexual harassment.³²⁷ Yet such policies appear to be of limited utility. For example, only one of 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.³²⁸ 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."³²⁹

The experiences regarding gender discrimination in the legal profession workplace, although varied, are similar throughout the states. In Indiana, 20% of women and 5.2% of men have witnessed or experienced verbal advances.³³⁰ This number is low compared to New York, where 30% of women and 11% of men have similarly witnessed or experienced verbal advances.³³¹ Over half of the female attorneys in Indiana reported that they witnessed or experienced the use of inappropriate names (e.g., "dear," "sweetie"),³³² whereas the number was higher in New York at two-thirds of female attorneys.³³³ In Indiana, 16.9% of women reported hearing sexist jokes,³³⁴ and in New York, 65% of women reported observing or experiencing the telling of sexist or demeaning jokes.³³⁵ When the Indiana data is compared to that from New York, it appears that female lawyers in Indiana experience less harassment or discrimination. This comparison is very telling, since the situation regarding gender discrimination in Indiana has not improved significantly since 1990.³³⁶ It may be that the way 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.

327. The actual figures are that 56% of firms had written policies on gender discrimination and 61% of firms had written policies on sexual harassment. WASHINGTON SAGE REPORT, *supra* note 239, at 11.

328. *Id.* at 12.

329. RHODE, UNFINISHED AGENDA, *supra* note 169, at 19.

330. 2004 INDIANA REPORT, *supra* note 14, at 25.

331. NEW YORK BAR REPORT, *supra* note 237, at 31.

332. The actual figure is 54%. 2004 INDIANA REPORT, *supra* note 14, at 25.

333. NEW YORK BAR REPORT, *supra* note 237, at 31.

334. 2004 INDIANA REPORT, *supra* note 14, at 26.

335. NEW YORK BAR REPORT, *supra* note 237, at 31.

336. *See supra* notes 194-96 and accompanying text.

3. Work/Family Balance

Work and family balance 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.³³⁷ Furthermore, because it affects both male and female lawyers, the balance of work and family has become important to both genders.³³⁸ 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.³³⁹

a. Attorneys with Families

The data from the Indiana survey reveals that a majority of the attorney respondents are parents,³⁴⁰ and half of the female respondents and one-third of the male respondents think family demands have been an obstacle to their success.³⁴¹ This tension between work and family leaves attorneys little time for personal lives. The data shows more than one-third of female lawyers and nearly one-quarter of male lawyers report dissatisfaction with the amount of time they have for themselves.³⁴²

Nationwide, the data shows even more of a tension between work and family life. Over half of attorneys across the nation have children.³⁴³ For 70% of both men and women, including partners and associates, balancing the demands of work with the demands of their personal lives is difficult.³⁴⁴ However, in New York, the data shows that 80% of attorneys in New York have children,³⁴⁵ and approximately three-quarters of them are somewhat or very satisfied with the balance between the time spent on work and family responsibilities.³⁴⁶ The data in New York shows a discrepancy from the

337. Cunningham, *supra* note 223, at 968.

338. See CATALYST, *supra* note 242, at 19, 40 (noting that 70% of attorneys of both genders experienced work/life conflict and for more than half of female attorneys and one-third of male attorneys, work/balance is one of the top three concerns).

339. Reichman & Sterling, *Sticky Floors*, *supra* note 234, at 73.

340. The actual figures are that 62.8% of female attorneys and 80.4% of male attorneys have children. 2004 INDIANA REPORT, *supra* note 14, at 28.

341. The actual figures are 50.6% of females and 31.9% of males. *Id.*

342. The actual figures are 35.6% of female attorneys and 22.8% of male attorneys. *Id.*

343. The actual figures are 57% of female attorneys and 65% of male attorneys. CATALYST, *supra* note 242, at 12.

344. *Id.* at 40.

345. NEW YORK BAR REPORT, *supra* note 237, at 9.

346. The actual figures are 72% of female and 79% of male. *Id.* at 33.

trend seen in Indiana and nationwide regarding the balance of work and family.

While some male lawyers are concerned with taking an active role in parenting, female lawyers 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.³⁴⁷ In Indiana, two-thirds of the attorney survey respondents have spouses who work either full-time or part-time outside of the home,³⁴⁸ yet over half of the female respondents have spouses who contribute to less than half of the family responsibilities.³⁴⁹ Furthermore, half of the men agree that they are accountable for less than half of the family responsibilities.³⁵⁰

Considerable research has analyzed the relationship between female attorneys' roles as mothers and their underrepresentation 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 for or excluded.³⁵¹ What the study found is that "marriage and children are positively associated with the probability of becoming partner when experience measures are included."³⁵² 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.³⁵³

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 greatly affected by this balancing act. The available data shows that "eighty-five percent of women become mothers during their working lives. Ninety-three percent of mothers aged twenty-five to forty-four work fewer than fifty hours a week year round."³⁵⁴

Part-time work is the main type of alternative work schedule lawyers utilize to accommodate the needs of their families. Nationally, among lawyers, "almost one in two women and one in five men want a reduced

347. The actual figures are 84% male attorneys and 44% female attorneys. CATALYST, *supra* note 242, at 12.

348. The actual figure is 66.7% of female attorneys and 67% of male attorneys. 2004 INDIANA REPORT, *supra* note 14, at 28-29.

349. The actual figure is 62% of the females. *Id.* at 28-29.

350. The actual figure is 50% of the males. *Id.* at 29.

351. Noonan & Corcoran, *supra* note 270, at 140-41.

352. *Id.* at 141.

353. *Id.*

354. Joan C. Williams, *Canaries in the Mine: Work/Family Conflict and the Law*, 70 FORDHAM L. REV. 2221, 2223 (2002) (citing Joan Williams, *It's Snowing Down South: How to Help Mothers and Avoid Recycling the Sameness/Difference Debate*, 102 COLUM. L. REV. 812 (2002)).

work schedule.”³⁵⁵ 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 10% 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.³⁵⁶

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.³⁵⁷ In the state of Washington, the majority of law firms surveyed recently reported having policies regarding part-time work.³⁵⁸ Nationwide, over 90% of the firms listed in the *National Directory of Legal Employers* have either formal or informal flexible work policies; however less than 3% of attorneys in those firms are on a part-time schedule.³⁵⁹ In Indiana, the majority of female lawyers and close to half of male lawyers reported that their employer offered some type of part-time schedule,³⁶⁰ yet less than 20% of female lawyers and slightly over 10% of male lawyers work part-time.³⁶¹

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 worked reduced hours revealed that nearly three-quarters of them report their colleagues believe they lack commitment.³⁶² Nationwide data shows a large majority of female attorneys in private practice think that their use of flexible work arrangements would have a negative impact on their career advancement.³⁶³ The views regarding part-time employees are borne out by further research that has found as follows:

355. CATALYST, *supra* note 242, at 42.

356. The actual figures are 43% of female attorneys and 11.6% of male attorneys have found that a lack of part-time has been an obstacle to their success, and 43.6% of females and 12.4% of males believe it will continue to be an obstacle in the future. 2004 INDIANA REPORT, *supra* note 14, at 27.

357. The actual figures are 76% of female attorneys and 70% of male attorneys. NEW YORK BAR REPORT, *supra* note 237, at 37.

358. The actual figure is 58%. The policies included job sharing, alternative work schedules, as well as part-time. WASHINGTON SAGE REPORT, *supra* note 239, at 10.

359. CATALYST, *supra* note 242, at 42 (citing National Association of Law Placement, *National Directory of Legal Employers* (2000)) (showing the actual figures are 94% of firms having part-time schedules and only 2.9% of attorneys working part-time hours).

360. The actual figures are 54.5% of female attorneys and 49.2% of male attorneys. 2004 INDIANA REPORT, *supra* note 14, at 27.

361. The actual figures are 17.4% of female attorneys and 11.3% of male attorneys. *Id.*

362. WOMEN'S BAR ASS'N OF MASS. EMPLOYMENT ISSUES COMM., MORE THAN PART-TIME: THE EFFECT OF REDUCED-HOURS ARRANGEMENTS ON THE RETENTION, RECRUITMENT, AND SUCCESS OF WOMEN ATTORNEYS IN LAW FIRMS 21 (2000) (reporting 70%).

363. CATALYST, *supra* note 242, at 56 (showing that 9% of female in-house counsel and 22% of female attorneys in law firms believed that the use of a flexible work arrangement would not adversely impact their career advancement).

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.³⁶⁴

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.³⁶⁵

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.³⁶⁶ When 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.³⁶⁷ At that point, a self-fulfilling prophecy of part-time 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-time attorneys are reinforced. Considering that the majority of part-time lawyers are women, this tendency harms women's place in the legal profession. As a prominent researcher has stated regarding this phenomenon, “[w]omen leaving the workforce to be with their children affirm long-held stereotypes 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.”³⁶⁸

Motherhood for female lawyers in the legal workplace has accompanying damaging factors which degrade a mother's morale. Different treatment by co-workers is an example of such a factor. In response to such treatment, one female attorney commented, “[L]ook I had a baby, not a lobotomy.”³⁶⁹ Other factors, such as the negative perceptions of part-time lawyers, have been linked with attorney attrition.³⁷⁰ In a study

364. ENGLISH, *supra* note 206, at 212.

365. *See supra* notes 220-24 and accompanying text.

366. JOAN WILLIAMS & CYNTHIA THOMAS CALVERT, *BALANCED HOURS: EFFECTIVE PART-TIME POLICIES FOR WASHINGTON LAW FIRMS* at 15-16 (2d ed. 2001), available at <http://www.pardc.org/Publications/BalancedHours2nd.pdf> (2d ed. 2001).

367. RIKLEEN, *supra* note 3, at 136.

368. ENGLISH, *supra* note 206, at 226.

369. Rhode, *Balanced Lives*, *supra* note 223, at 16.

370. *See* ENGLISH, *supra* note 206, at 203; RIKLEEN, *supra* note 3, at 187; RHODE, *UNFINISHED AGENDA*, *supra* note 169, at 17-18; Rhode, *Balanced Lives*, *supra* note 223, at 16.

of attorneys who left their firms between 1996 and 1998, four out of ten reported their decision to leave was affected by their firm's approach toward reduced-hours schedules.³⁷¹ 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 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.

V. CONCLUSION AND RECOMMENDATIONS

While the overall satisfaction data shows that Indiana attorneys and their counterparts nationwide appear satisfied with their careers on the whole, 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 female lawyers are still not on even ground with their male counterparts in key aspects. The longer the current situation remains in place, 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 report³⁷² 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. These 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

Because of the heavy billable hour requirements, the organizational structure of law firms³⁷³ only evaluates and promotes lawyers based on the

371. WOMEN'S BAR ASS'N OF MASS. EMPLOYMENT ISSUES COMM., *supra* note 362, at 38.

372. *See generally* 2004 INDIANA REPORT, *supra* note 14, at 6.

373. For two stark views of the changes in the structure of legal practice, the future of the legal profession in general, and its evolution into an occupation, *see* Carl T. Bogus,

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, attorneys could complete their projects in an efficient number of hours, leaving 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 reduced hours on projects in proportion to their compensation. Part-time lawyers would continue to be parts of 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 completed a certain number of projects, and provided that their work product was of a high enough quality.

Attorneys would be better able to balance their careers and family demands under a project-based system, because 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.³⁷⁴

Changing the work environment of the law firm would include increasing availability and acceptance of flexible or reduced-hour schedules. While most law firms have written policies covering part-time or flexible schedules, 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 female 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.

The Death of an Honorable Profession, 71 IND. L. J. 911 (1996); Robert L. Nelson, *The Futures of American Lawyers: A Demographic Profile of a Changing Profession in a Changing Society*, 44 CASE WEST. L. REV. 345 (1994).

374. See generally WINNING ALTERNATIVES TO THE BILLABLE HOUR: STRATEGIES THAT WORK (James A. Calloway & Mark A. Robinson eds., 2d ed. 2002).

B. ENCOURAGE 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 in addition to teaching 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 could 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 could alert students — in particular, female students — to the potential obstacles to their advancement. If students were more aware of the realities of the practice of law, they could alter their future course of employment (e.g., 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 first-hand comments from former students, 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. 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 female law students are mentored by those lawyers to whom they are apprenticed while in law school should also be explored, as with other law students from underrepresented groups. When female law students at Harvard Law School and other elite law schools are showing self-doubt in their endeavors,³⁷⁵ the importance of mentoring is paramount. Furthermore, if female lawyers are able to directly mentor female law students, the differences in experience which have become evident over time³⁷⁶ would be openly shared and discussed.

375. See Elena Kagan, Dean, Harvard Law School, Leslie H. Arps Memorial Lecture at the Association of the Bar of the City of New York (Nov. 17, 2005), *available at* <http://www.law.harvard.edu/news/abnyspeech>.

376. See RHODE, UNFINISHED AGENDA, *supra* note 169, at 31 (discussing how some female lawyers have varying levels of support for women’s issues depending on their internalizing of the culture in which they have succeeded).

C. CONTINUE THE USE OF TASK FORCES AND BAR ASSOCIATIONS TO ASSIST IN BRINGING ABOUT CHANGE THROUGH FURTHER RESEARCH AND ANALYSIS, INCLUDING COMPARATIVE RESEARCH AND THAT OF OTHER PROFESSIONS

As mentioned above,³⁷⁷ in the last decade or so, a number of bar associations and state 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 survey analyzed in this Article. Some states, such as Minnesota³⁷⁸ and Washington,³⁷⁹ 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. Determining best practices for gender equity in a local, particularized manner is essential to bringing 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 to analyze the obstacles for success for female 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.³⁸⁰ Comments by some respondents in the Indiana 2004 survey showed a need for further research and analysis in these areas. The task forces and bar associations could focus on two specific areas that need more attention and further analysis: The disparity in financial compensation between the genders³⁸¹ and the elevation of more female judges to the bench.³⁸² The task forces will need to continue to assess the status of women in the profession periodically in order to monitor progress and those areas still needing further research and analysis.

The task forces and commissions should also undertake comparative research and analysis of the status of women in the legal profession in other countries³⁸³ to ascertain whether the phenomena identified in the United States is also present in other countries. If the other countries are farther

377. See *supra* note 3, at 13-14; 151, at 234-41; and 326, and accompanying text.

378. MINNESOTA SAGE REPORT, *supra* note 326 at 2.

379. WASHINGTON SAGE REPORT, *supra* note 239, at 3.

380. 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, 708-09 (1996) for the report of a commission studying racial and ethnic diversity.

381. 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.

382. For a history of female judges, see NATIONAL CENTER FOR THE STATE COURTS, WOMEN IN THE COURTS 85-90 (Winifred L. Hepple & Laura Crites eds., 1978).

383. See, e.g., European Women Lawyer's Association, Constitution of the European Women Lawyers Association, <http://www.ewla.org/wfcontent/99.html> (last visited Sept. 21, 2007).

ahead than the United States in gender equality, lessons could be learned from their successes. Conversely, the United States may have lessons to teach our counterparts in other countries if comparative research shows that female lawyers fare better here than abroad.

Finally, further study can be undertaken to compare female lawyers with other female 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

Female lawyers continue to be ensconced in the "50/15/15 conundrum"³⁸⁴ where it has been 15 years since women comprised 50% of law students but only constituted 15% of law firm partners. Neither the passage of time nor the slowly trickling pipeline has resulted in women reaching 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.³⁸⁵ It is breathtaking to imagine how much more they can 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 THE 2004 INDIANA REPORT³⁸⁶

The Survey Research Center at Indiana University – Purdue University Indianapolis (formerly the Indiana Public Opinion Laboratory) (IUPUI)

384. See NAWL 2006 Survey, *supra* note 270, at 1.

385. See, e.g., Robert MacCrate, *What Women Are Teaching a Male-Dominated Profession*, 57 *FORDHAM L. REV.* 989, 993-94 (1989). See also Minna J. Kotkin, *Professionalism, Gender, and the Public Interest: The Advocacy of Protection*, 8 *ST. THOMAS L. REV.* 157 (1995) (discussing female attorneys' roles in the practice of law and how their values of care and connection can find a place in an advocacy of protection that can change professional norms).

386. 2004 INDIANA REPORT, *supra* note 14, at 4.

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 about 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 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% 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 throughout the summer and fall.

APPENDIX B

RESOURCES

The Project for Attorney Retention (PAR) at the University of California, Hastings College of the Law seeks to enhance the recruitment and retention of lawyers through the use of flexible schedules so that they are able to lead balanced lives.³⁸⁷ 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.³⁸⁸

Deloitte and Touche's longstanding "Women's Initiative" is at the core of the retention and advancement of women in the workplace.³⁸⁹ The program started in 1993 and has caused an evolution in the firm's

387. The Project for Attorney Retention, An Initiative of the Center for Work-Life Law at UC Hastings College of the Law, <http://www.pardc.org> (last visited Nov. 13, 2007).

388. *Id.*

389. Deloitte & Touche LLP, Initiative for the Retention and Advancement of Women: Celebrating 10 Years (2003), available at http://diversity.ncbar.org/Committees/Women+in+the+Profession/WIP+Publications/Downloads_GetFile.aspx?id=5343.

culture.³⁹⁰ When surveyed recently, a large majority of their female employees reported that they would recommend Deloitte as a great place to work.³⁹¹

APPENDIX C

SIGNIFICANT BAR ASSOCIATION EFFORTS

The Bar Association of San Francisco entreated over eighty law firms and corporate legal departments to pledge to ensure gender equity in their workplace.³⁹² Their pledges committed them to: (1) raise their levels of women in partner and management positions to at least 25% by the end of 2004; (2) have at least one female chairperson or managing partner, either firm-wide or in a branch office, by the end of 2005; and (3) accept the concept of part-time partnership.³⁹³ Three years later, 63% of those who signed the pledge had 25% female partnership, and in 69% of firms and 54% of legal departments, at least 25% of their management were women.³⁹⁴

Chicago started a program similar to the one in San Francisco. It is named "A Call to Action" and currently has forty-six participants.³⁹⁵ The Bar of the City of New York has drafted a "Statement of Diversity Principles;" currently eighty-two firms are signatories.³⁹⁶ These firms share data about the composition of their workforce with the bar, in order to create a baseline for comparison.³⁹⁷ The data collection is intended to be ongoing, so as to assess the firms' progress in becoming more diverse.³⁹⁸

390. *Id.*

391. *Id.*

392. Angela M. Bradstreet, *Breaking the Glass Ceiling*, 89(2) *WOMEN LAWYERS J.*, 13 (2004).

393. *Id.* at 13.

394. *Id.*

395. Chicago Bar Association's Alliance for Women, *A Call to Action: Focus on Diversity*, <http://www.chicagobar.org/calltoaction/> (last visited Sept. 23, 2007).

396. THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, *DIVERSITY BENCHMARKING STUDY: A REPORT TO SIGNATORY LAW FIRMS 3* (2005), available at http://www.nycbar.org/pdf/report/Public_benchmarking_report.pdf.

397. *Id.*

398. *Id.*
