Gender bias in the legal field: Experiences of female attorneys and law students

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Gender bias in the legal field: Experiences of female attorneys and law students

Abstract
This study examines the experiences of female attorneys and law students with respect to gender bias. Contemporary evaluations indicate that while women comprise approximately 50% of the job force, they are significantly underrepresented in management positions and continue to be paid less than men; this is especially true in the legal field. Thirty-five in-depth interviews were conducted, 25 with women who had obtained a juris doctorate and 10 with female law students. Women discussed their experiences in the legal field relative to law school, expectations for their careers, media influences, gender discrimination and harassment. Qualitative analysis revealed that pregnancy was the most salient issue that participants felt women still faced with regard to equality in the workplace. Women felt that gender bias in the workplace is increasingly subtler, and consequently more difficult to identify and combat. Additionally, while many women described experiences with gender discrimination or harassment, few labeled their experiences as such.

Keywords
Law, Sociology, Industrial and Labor Relations, Women’s Studies
GENDER BIAS IN THE LEGAL FIELD: 
EXPERIENCES OF FEMALE ATTORNEYS 
AND LAW STUDENTS 

BY 

JESSIE L. FRENCH 
Bachelor of Arts, University of New Hampshire, 2008 

THESIS 

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In 

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This thesis has been examined and approved.

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ABSTRACT

GENDER BIAS IN THE LEGAL FIELD: EXPERIENCES OF FEMALE ATTORNEYS AND LAW STUDENTS

by

Jessie L. French
University of New Hampshire, May 2010

This study examines the experiences of female attorneys and law students with respect to gender bias. Contemporary evaluations indicate that while women comprise approximately 50% of the job force, they are significantly underrepresented in management positions and continue to be paid less than men; this is especially true in the legal field. Thirty-five in-depth interviews were conducted, 25 with women who had obtained a juris doctorate and 10 with female law students. Women discussed their experiences in the legal field relative to law school, expectations for their careers, media influences, gender discrimination and harassment. Qualitative analysis revealed that pregnancy was the most salient issue that participants felt women still faced with regard to equality in the workplace. Women felt that gender bias in the workplace is increasingly subtler, and consequently more difficult to identify and combat. Additionally, while many women described experiences with gender discrimination or harassment, few labeled their experiences as such.
CHAPTER I

INTRODUCTION

The topic of gender discrimination in the workplace is widely discussed, with respect to whether it’s improving, getting worse or no longer an issue women have to face (i.e., Gorman, 2006; Loscocco, 1990, Reichman & Sterling, 2004; Reskin, 1993). It seems fairly easy to ask the question “are you or have you ever been discriminated against in the workplace?” but this is rarely answered as easily. Many well-intentioned workplace survey researchers may aim to answer this question, but a simple yes or no answer seems inadequate to address the complex issues surrounding women and the ways in which they are treated in the workplace. In the current study, narratives were collected based on interviews with female attorneys and law students about their experiences as women in the field.

The main focus of this study was to ascertain if women lawyers and law students experience discrimination and/or sexual harassment in their legal careers. Corollary examinations focused on whether gender discrimination is the same now as it was 20 or 30 years ago and whether improvements made with respect to women’s work environments have been beneficial or have created other issues. Do current female law students have reason to be optimistic about their chances of reaching the top levels of the legal system? How have conditions for women in law schools improved in comparison to the past? What is it like to be a female attorney in the new millennium? It is with
these questions in mind that this study was developed. Qualitative interviews were used to see the grey between the black and white of yes or no answers, average income levels and highest job position attained. It is the goal of this research to analyze intricate and sometimes contradictory narratives to shed light onto the complex processes women lawyers and law students enlist as they navigate the still male-dominated legal field.

This chapter begins with a brief overview of some of the barriers women traditionally have faced in male-dominated fields, as well as a synopsis of women's representation in both the workforce in general and the legal field more specifically. The literature review presents previous work concerning sexism, stereotypes, discrimination, sexual harassment and workplace bullying. These broad topics overlay the more specific instances of differential treatment experienced by women lawyers and law students.

Chapter III describes the methodology and the sample used to support the main findings of this study. Chapters IV through Chapters VIII report the analyses of the narratives. The chapters focus on the following topics: the law school experience and expectations, discrimination, pay and promotion, the influence of the media and women's perceptions of their role in the legal system. The final chapter consists of conclusions as well as considerations for policy implications, future research and limitations.

**Barriers Facing Women in the 21st Century**

In 2009, 50 percent of workers were women, and almost two-thirds of women reported being either the primary or co-breadwinners of their families (The Shriver Report, 2009). While these numbers represent a drastic shift from the past, it is important that we carefully consider their actual meaning. Simply because women have equal numbers, we cannot conclude that women and men are finally considered true “equals” in
the workforce. One clear example of this is that while women may make up half of the
workforce in 2008, they only represented 37.4% of management positions (Bureau of
Labor Statistics, 2009). Of these management positions, women constituted 66.3% of
human resource managers, 65.1% of education administrators and 68.1% of social and
community service managers (Bureau of Labor Statistics, 2009). Women also account
for twice as many workers who are paid at or below the federal minimum wage as men
(Bureau of Labor Statistics, 2009). This means that while women do have management
positions, many of them are in fields that have been largely considered "women’s work"
and are paid less than many traditionally "male" occupations.

Thirty-four percent of lawyers and 87.7% of paralegals and legal assistants are
women (Bureau of Labor Statistics, 2009); in 2009, 19.2% of all law firm partners were
women (National Association for Law Placement (NALP), 2009). When we compare
this 18.3% of lawyers who have risen to partner status with the 37.4% of management
positions in general, it becomes clear that women lawyers may be at more of a
disadvantage in attaining leadership positions than women in other occupations. Women
employed as lawyers average approximately $1509 per week, while men in the same field
average approximately $1875 per week (Bureau of Labor Statistics, 2009). In all
occupations, women average around $638 per week, while men average $798 per week
(Bureau of Labor Statistics, 2009). Thus, although women lawyers bring home more
money than women in other occupations, they still average 20% less income than male
coworkers, almost exactly the same deficit as all women workers.

What explains these discrepancies? The most obvious explanation is that women
have been slowly increasing their numbers in the workforce, and workplace practices
have yet to catch up. But as the numbers of women continue to rise, a number of issues concerning the status of women in general, and thus the willingness to address their unique situations concerning work, come to light. Stereotypes about differences in the nature of women and men cause some people to question whether women can navigate certain occupations as successfully as men. Women's traditional roles as mothers and caretakers also create conflicts for women as they try to balance the demands of work and home, leading some to question women's dedication to their career. These factors may lead to a lack of willingness to promote women into leadership roles within organizations, which in turn has a detrimental effect on their income levels.

In addition to the specific workplace issues that can arise for women, sexism in general has played a large role in shaping the way women are viewed in our society, and thus how their role in the workforce is viewed as well. Rebecca Hannagan (2008) writes:

> It has been the practice of many anthropologists to look for leadership that looks like leadership as we know it – which has been largely gendered male. A Darwinian feminist approach suggests we consider whether male and female leadership ought to necessarily look the same. Female spheres of influence and life experiences make them qualitatively different leaders not just quantitatively less leader-like than males. (p. 472)

Because the majority of our leadership and workplace practices have been shaped by men, women often encounter problems either trying to remold those practices to better fit their needs or facing criticism for being “too masculine”. Women are forced to walk a fine line between fitting into the masculine workplace and excelling in ways that will get them noticed (Reichman & Sterling, 2004). Another effect of this masculine work
culture concerns the interactions between men and women, especially relative to networking, which can be an important aspect of career success. Elliott and Smith (2004) conducted a study in which they found that "homosocial reproduction" (a tendency of those in power to promote similar individuals to positions of power they oversee; Kanter, 1977) is the means by which most groups attain workplace power, and white men have a disproportionately greater opportunity to engage in these acts. For example, a manager may be interviewing to fill a supervisor vacancy; homosocial reproduction would indicate that the most likely choice would be the individual sharing the greatest number social characteristics (i.e., gender, race) with the manager. Therefore, if the manager is a white male, it is most likely that the job will be given to a white male. This may provide a plausible explanation as to why, despite the fact that women are entering law schools in equal numbers with men, their ability to rise to partnership status has not seen such an increase.

Many previous studies have been done evaluating the differential treatment given to jobs that are considered to be "women's work" (Reskin, 1993), finding that they lack benefits (Perman & Stevens, 1989), training (Duncan & Hoffman, 1979), opportunities to exercise authority (Reskin & Ross, 1992), promotion (Glass, 1990) and pay less than traditionally male occupations (Marini, 1989). Much of this research was conducted over the past twenty years, and current examinations seem to indicate that little has been done to improve the status of women's work. Reskin (1993) postulates that the ways in which men and women are socialized can have consequences for the delineation of female-appropriate work and the skills training that women receive that would prepare them for particular types of jobs, thus creating an aversion to work that falls outside of these
conditions. Researchers have shown, however, that some women do prefer the intrinsic and extrinsic benefits of traditionally male occupations (Loscocco, 1990). Nevertheless, if “women’s work” continues to be more favorable and provide more opportunities for women to advance, it should not seem strange that those occupations employ the majority of women, while especially male-dominated fields (i.e., the legal system) provide less-favorable conditions. Changing society’s perceptions of the value of this work seems to be the most palpable avenue to fostering greater equality within the workforce.

It would seem logical that if an employee has a problem with workplace practices, he or she would lodge a complaint with a supervisor or make some attempt to create a change in policy. This is not often the case with women employees, however, especially women lawyers, as Reichman and Sterling (2004) so aptly point out. They describe a conflict that women face, in line with the balancing act of trying to fit in and get noticed (described earlier), in which they are aware of problems but find themselves unable to address them. Women are often worried that they will be labeled as a complainer, or worse, ‘the bitch’ for bringing to light workplace inequities. They also often lack the resources necessary to document and/or justify their complaints (Reichman & Sterling, 2004). The fact that women lawyers are almost always the minority in their office cannot possibly make the grievance process any easier. It is quite plausible that for these reasons, many jobs remain gendered, because women lack the empowerment to address issues and foster change in male-dominated environments.

Even as women break into traditionally male occupations, such as the legal field, segregation along gender lines is still evident. Reskin (1993) defines segregation as “more than physical separation – it is a fundamental process in social inequality” (p.
While women join the ranks of lawyers, specialties within the legal practice become more and more gendered. The highest concentrations of women lawyers are found in family law and public interest work, which are also among the lowest paid legal specialties. These areas of focus are also associated with far less prestige than high profile corporate or criminal law, for instance. Greater focus on the issue of sex-segregation in legal specialties can be found in Chapter VI.

Just as the attitudes of the larger society can have an effect on the wages earned in particular fields labeled “women’s work”, customers’ biases may be fostered as well. Indeed, many employers cite customer discrimination as a justification for discriminating against women, claiming that they have a responsibility to honor paying clients’ wishes. Court rulings have not supported this justification nor has previous research (Reskin, 1993). It may be that clients in certain fields do in fact express a preference for working with men, or it may be that employers are simply trying to mask their own prejudices against women; perhaps it is a combination of the two.

The questions that shaped the interviews in this study centered around educational and workplace experiences of women in the legal field. Participants were asked to describe their own experiences, as well as those of their peers, with respect to equality in education, workplace discrimination and/or harassment, personal career expectations, anecdotal evidence concerning differential treatment in the areas of pay and promotion, the influence of the media on perceptions of women lawyers and what they believe their personal role as a woman in the legal field is. The following chapter examines prior research in terms of sexism, stereotypes, discrimination, sexual harassment and
workplace bullying, and the ways in which these topics can affect women law students and lawyers.
CHAPTER II

LITERATURE REVIEW

In this chapter, a review of prior research includes the following three sections: Sexism, Stereotypes and Discrimination, Sexual Harassment and Workplace Bullying. These areas of study facilitate an understanding of the issues women experience in the legal profession, as described by women law students and lawyers. The research provides a framework through which one can examine the challenges faced by women as they seek to establish equality within the ranks of the traditionally male-dominated legal profession.

**Sexism**

Sexism is broadly defined as “prejudice, stereotyping, or discrimination, typically against women, on the basis of sex” (Oxford American Dictionaries, nd); it is therefore the root of many issues concerning women’s inequalities in the workplace. The belief that women are inferior to men solely on the basis of sex has led to differential treatment of women, pay disparities between women and men, and unfair hiring and promotion practices. As women continue to increase their numbers in the workforce, they are saddled with the burden of maintaining culturally shaped roles of motherhood while simultaneously trying to take on careers that have been designed with men in mind. Not only do women typically have a heavy workload between their jobs and their homes, but
they also have to “prove” that they are capable to take over positions that have traditionally been held by men.

In the past 15 years, social science researchers have also begun to differentiate between types of sexism, positing that sexism manifests in ways more in line with a deep ambivalence as opposed to general disdain (Glick & Fiske, 1996). The Ambivalent Sexism Theory (AST; Glick & Fiske, 1996, 1999, 2001a, 2001b) draws a distinction between sexism that is patronizing in character (benevolent sexism) and that which is rooted in a belief that women are trying to control men (hostile sexism). Benevolent sexism is promulgated by the belief that women are fragile and have a need to be protected; they are virtuous and innocent (Cikara & Fiske, 2009). Conversely, hostile sexism beliefs are generated by the notion that women use sex and/or feminist convictions to gain power over men (Cikara & Fiske, 2009). It is not men only, however, that hold these two variations of sexist beliefs. Women, though more likely to hold benevolent sexist ideals, can also express hostility toward other women based on sex stereotypes. These women are most often those who eschew typical “feminine” behavior and identify more with male stereotypes, while those who espouse benevolent sexist canons are more likely to embrace traditional feminine norms.

The consequences of hostile and benevolent sexism for women in the workplace are many, stemming from both men and women promoting them. In terms of leadership opportunities within organizations, men may believe that a woman either does not deserve to hold such a position (hostile sexism) or that she ought not to be exposed to the lifestyle believed to be inherently necessary to maintain the role (benevolent sexism). Similarly, women may feel that their personality traits do not predispose them to operate
in a leadership capacity (i.e., not possessing the aggressive nature that has typically been seen in male leadership). The flaw in this line of thinking is the notion that there is a singular management technique that is successful, which does not take into account the many variations of style that exist even among men. Women may also believe that they are not emotionally or physically (i.e., committing enough time to multiple priorities) capable of maintaining both their leadership role in the workplace and their caretaking role at home; this is discussed further in Chapter VII.

The recognition of two types of sexism creates the opportunity to examine the different ways in which women may experience differential treatment based on their gender, which in turn opens the possibilities for combating such treatment in the workplace. Masser and Abrams (2004) found that participants high in hostile sexist attitudes were significantly more likely to evaluate female managerial candidates negatively and less likely to recommend that they be given management positions. Whereas these attitudes can have direct effects on promotion decisions (of others) for women, benevolent (and more subtle) forms seem to have more of an effect on the behavior of women themselves. For example, women did not perform as well on a negotiation task when a gender-based stereotype was implied as when it was explicitly stated (Kray, Thomson & Galinsky, 2001).

Each individual is exposed to varying degrees of both hostile and benevolent sexism from family, community and society as a whole. These variations have effects on the socialization of gender roles, in that within them is embedded an idea of what women are and ought to be capable of doing. There is increasing evidence that, in general, people believe that sex discrimination is no longer a problem for contemporary societies.
(Swim, Aiken, Hall & Hunter, 1995); this belief comes starkly into contrast with the fact that there are so few women in top-level positions of authority within organizations.

Baretto, Ellemers, Cihangir and Stroebe (2009) express the idea that sexism is no longer the overt refusal to “allow” women to do things traditionally considered masculine, but instead manifests itself in subtler ways.

These subtle forms of discrimination may be even more detrimental to women, as they have been shown to be associated with self-directed anger and negative emotions. Women often cannot differentiate between individual shortcomings and unfair judgments based on their gender, whereas blatant discrimination evokes a reaction concerning the more conspicuous behavior of another (Baretto & Ellemers, 2005). Here benevolent sexism may play an important role, as high-ranking men involved in promotion decisions may consider the job’s required time commitments and/or stress level as detrimental to a woman (and her family)’s well being. This may be a large contributor to “the line” that women feel they have to walk, as those who hold benevolent sexist ideas often do not see them as problematic; with or without recognizing it, they are forcing gender stereotypes on women employees. Men are seen as making a conscious choice to work tirelessly to provide for their families, whereas women who make that choice (the few who are allowed the opportunity) are seen as an anomaly falling outside traditional gender norms. Thus those women who call attention to the differential treatment risk being viewed as ungrateful for not appreciating the “consideration”, abnormal for not fitting into a traditional gender role and callous for not considering what others believe will cause detriment to her (existing or potential) family.

**Stereotypes**
Gender stereotypes are generalizations that exist based on assumptions made about the "inherent" or biological differences between men and women (i.e., Brescoll & Uhlmann, 2008; Hunter, 2005; Roos, 2008; Zhang, Schmader & Forbes, 2009). Persons holding such stereotypes often call upon history to illustrate that women and men have consistently maintained distinct roles based on these traits (Zhang et al., 2009), falsely concluding that these gender-assigned roles are norms that should not be violated. An obvious example of this stereotype is that women give birth to children and are therefore better caregivers for children than men; more than a few single fathers have shown that this is simply not the case. Sexism reinforces these generalizations by insisting that women have chosen particular roles in society because they are better suited for them, and not because they were relegated or forced into roles that kept them at home and dependent on men to provide for them. A person who endorses sexist stereotypes does not consider fully the impact of the socialization of men and women into these roles.

Specific to the legal profession, which has traditionally been gendered masculine, the argument (or assumption) is often made that women lack the aggressiveness and tenacity to make good lawyers. This belief not only neglects the fact that the legal profession was shaped by men during a time when women were simply not allowed to practice law, and therefore ignores the possibility that there are other ways in which an understanding and application of the law might be facilitated, but also rejects the reality that women do possess these "masculine" traits. Hunter (2005) illustrates this point when reporting that a male participant remarked that women barristers were not considered challenging opponents, and therefore were often not selected for high-profile cases. Other stereotypes about women that can factor into decisions about whether they should
be selected for important jobs include that they are not dedicated enough to their jobs (i.e., over their families) and that they are overly emotional, and therefore not rational. Hunter (2005) describes a “self-fulfilling prophecy” effect that can occur when a superior makes these assumptions about a woman subordinate:

A senior partner gets a big case and asks a male junior partner to put together a team. Two associates, one male and one female, seem appropriate based on their experience and workload. Recognizing that the case may take several years to develop and that the client is a little picky, the junior associate worries about continuity. He has heard that there is national data that women turn over more rapidly than men. He thinks, “if I put a woman on this case, she may leave, and I may end up in trouble with the case and with the senior partner.” He gives the assignment to the male associate. The female associate works on other things. After awhile, she says, “I’m not getting any good assignments with this firm,” and she leaves. The junior associate says, “I knew it!” (p. 71-72)

This is one example of the vicious cycle that women face; stereotypes about women can cause them to be denied the kinds of work that help them move ahead and succeed, which then can cause them to choose alternative career paths, which in turn serves to strengthen the original stereotypes that kept them from advancement in the first place.

Another example of this self-fulfilling prophecy can occur around the stereotype that women are more emotional than men and therefore incapable of handling workplace stress. Brescoll and Uhlmann (2008) found that men and women who expressed anger were treated differently in terms of hypothetical pay and promotion. Women who showed
anger in workplace situations were accorded less status, less pay, and considered less competent, and their anger was considered to be caused by internal character traits (i.e., being “an angry person”). Conversely, men who showed anger were accorded higher levels in all three areas, and their anger was seen as being externally caused (i.e., a challenging situation); men who showed sadness were accorded less status than those who expressed anger (Brescoll & Uhlmann, 2008). Thus a woman who shows an emotion such as anger in the exact same scenario that a man would show that emotion still faces the stereotyping that attributes her anger to incompetence, and the cycle continues.

It seems to be the case that even as women shed the stereotypes that have held them in traditional, dependent roles, they may be faced with assumptions about their future behavior and emotional stability; challenging these stereotypes with responses such as anger, even if such a response would be elicited from a man in a similar situation, may only serve to reinforce the negative stereotypes held about women in the first place. Women, therefore, can be hard-pressed to find successful solutions to overcoming the barriers they face in seeking promotion in the workplace, especially the legal system that is so entrenched with male norms. This reality necessitates the balancing act that women must negotiate between “blending in” with male colleagues and managing stereotypes that can be held about them in many different respects. When all of these obstacles are considered, it seems much more reasonable that so few women have risen to the tops of the legal field.

**Discrimination, Sexual Harassment and Workplace Bullying**
Despite the fact that more women are earning law degrees than ever before, data concerning the profile of the legal profession indicate that there have been no significant changes in the ability of women to achieve equal status with men; this is true of most other professions as well (Reichman & Sterling, 2004). Even as the ability to generally disallow women from entry-level legal positions is prohibited, decisions regarding promotion and pay have a similar effect in that they can prevent women from rising through the ranks; additionally, subtler instances of discrimination (often described as “differential treatment”) may discourage women from even attempting to combat sexism in the workplace, as they question whether these doubts concerning their abilities are grounded in misogynist ideology or personal shortcomings. Additionally, women currently face the challenge of “proving” that a superior does, in fact, possess beliefs that women are unable to fulfill certain aspects of a career; it does not become any easier when faced with the possibility that a female superior can hold sexist ideals (discussed further in Chapter VI).

Reichman and Sterling (2004) describe the effects of implicit and explicit gender bias, as well as institutionalized processes, that disadvantage women in the legal profession. Whether intentional, unconscious or taken for granted, these occurrences are especially difficult to combat because there is no one in particular to blame. Because women may be exposed to any number of forms of differential treatment, calling attention to one can create both increased difficulty in challenging future instances as well as increased exposure to other provocation when a woman is subsequently labeled as a “complainer” or “troublemaker”. This appears to be one case in which “the squeaky wheel” does not “get the grease”, as these labels have the potential to make a work
environment very hostile. Specific to the legal profession, in which promotion is almost exclusively based on the handling of difficult and/or high profile cases, a “complainer” seems less likely to get the top assignments and therefore less likely to see improved chances for advancement.

Gorman (2006) asserts that people draw on social characteristics to infer an individual’s ability in the workplace. This can create a unique challenge for women to convey their potential to achieve success, as the assumptions can include sexist beliefs about their personal and professional goals. Research has indicated that women were less likely to be promoted in situations where there was an increased level of uncertainty about aspects of the job (i.e., an increased potential for individual-level decision-making or lack of a formalized process; Gorman 2006) a conclusion in line with that of Kanter (1977). This negative relation is greater as the number of men in the decision-making position is increased, providing support for the notion that people tend to put their trust in those who share similar social characteristics to make the “right” decisions (Gorman, 2006). Thus, despite the fact that hiring processes in some fields have been systematized to minimize subjective promotion practices, occupations such as those in the legal field may still extend assignments (and consequently opportunities for advancement) based on an individual’s tendency to favor socially similar others.

Workplace bullying is an occurrence increasingly recognized by researchers and employers alike, and is an important manifestation of discrimination and harassment. It can materialize in many forms, including (but not limited to) ridicule, harassment, stigmatization, physical and interpersonal intimidation, threats and coercive control. In what is considered the seminal research concerning adult bullying (Workplace Bullying
Institute, nd), Leymann (1990) describes “mobbing and psychological terror” as the
ganging up of others on a particular individual and subjecting that individual to
psychological harassment. Four phases are outlined in this initial work on workplace
bullying; they include the “Original Critical Incident” (i.e., some job-related conflict),
“Mobbing and Stigmatization” (i.e., the manipulation of the target’s reputation,
communication indicative of disapproval toward the target, isolation, changes in nature of
the target’s work, threats or violence), “Personnel Administration” (i.e., management
intervenes and often sees the target’s defensive behavior as indicative of a personality
problem, the target subsequently becomes a “marked individual”) and “Expulsion” (i.e.,
relegated work status that can have serious social, social-psychological and psychological
consequences; Leymann, 1990). Sexism in a male-dominated environment, such as the
legal field, can foster many opportunities for women to be exposed to workplace bullying
and its severe corollaries; even as women may try to speak out against this treatment, the
aforementioned phases describe the extreme challenges they face.

More current research has created a concise definition of workplace bullying:
“repeated and persistent negative actions toward one or more individual(s), which involve
a perceived power imbalance and create a hostile work environment” (Salin, 2003, p.
1214). Increased workplace aggression has been shown to be directly related to feeling
threatened about one’s own competence, regardless of the context of the workplace
bullying (Fast & Chen, 2009). Thus, it makes sense that women lawyers would be targets
of such treatment by those who consider them competition, whether those persons are
men or women. Despite increased numbers of women in positions of workplace
authority, women subordinates have not necessarily enjoyed more friendly work
environments as they comprise 84% of all targets of workplace aggression, represent 50% of perpetrators of workplace bullying, and are significantly more likely to target other women (Namie’s U.S. Hostile Workplace Survey, 2000; as cited in Brunner & Costello, 2003). Controlling for job and life stressors, Rospenda, Richman and Shannon (2009) established that poor mental health and problem drinking are consequences of general and sexual harassment at work, of which women and minorities are more likely to be targets. Creating a hostile work environment seems to be a perfect example of the way in which discrimination has become subtler, as targets face many obstacles in naming and reporting their experiences.

Though many policies have been set in place around sexual harassment (a common manifestation of workplace bullying), research by Stockdale and Bhattacharya (2009) indicates that women in male-dominated fields and work groups are still more likely to experience sexual harassment. Fitzgerald, Drasgow, Hulin, Gelfand & Magley (1997) investigated particular conditions that were associated with more harassment (i.e., masculine occupational characterizations, occupational segregation) and other conditions that help protect against these effects (i.e., employee empowerment, formalization of practices) in the workplace. They asserted that there were significant risks for women who complained about sexual harassment within an organization that tolerated such behavior, especially because they were less likely to be taken seriously and the accused were less likely to experience serious sanctions as a result. Negative outcomes concerning psychological and physical well-being, as well as occupational consequences are associated with harassment, regardless of whether it is directly experienced or labeled as harassment by the target (Fitzgerald et al., 1997). This conclusion is especially
important, as victims of harassment and bullying are not always willing to define their experiences in those terms and report feelings of uneasiness around their own professional selfhood and abilities (Lewis, 2006). It seems plausible if these individuals view experiences with bullying and harassment as originating from problems within themselves, others are likely to blame the victim as well.

As stereotypes serve to reinforce sexist ideology, the actual behaviors that manifest include discrimination, sexual harassment and workplace bullying. While bullying and harassment may stem from overt, hostile sexism, the literature has indicated that discrimination may be less apparent (i.e., Reichman & Sterling, 2004) as it takes on forms that include differential treatment because of benevolent sexism. Thus many women may be hesitant to label questionable conduct as discriminatory, especially female attorneys, because they lack the clear-cut evidence to fit the actions into a very black-and-white legal definition. The reluctance of women to label unfair treatment as discrimination is examined further in Chapter V. As research continues to evince the subtle ways in which discriminatory practices occur, legal terms ought to begin to incorporate these indistinct substantiations so that those who are subjected to them have means for legal recourse.
CHAPTER III

METHOD AND SAMPLE

Participants

Thirty-five women (25 professionals and 10 law students) were interviewed. The participants ranged from 24 to 54 years of age (students: 24 to 29 years old; lawyers: 28-54 years old), came from varying socioeconomic backgrounds and were 97% Caucasian. The entire sample of professionals (21 lawyers, two judges, two law professors) had obtained a juris doctorate; years of practice ranged from one to 32 years, with over 50% practicing 10 or more years. Of the law students, 80% were scheduled to receive a juris doctorate within three months; the remaining 20% were in their second year of law school.

Measures and Materials

The data presented here are part of a larger study involving women employed as lawyers and law enforcement. For the purposes of this paper, only qualitative data will be analyzed. A written questionnaire consisting of quantitative measures was mailed to participants to complete in the privacy of their own homes, after which a qualitative interview was conducted. Interview length ranged between 30 minutes and one hour fifteen minutes.

A qualitative questionnaire was used to conduct a structured interview regarding participants’ work experiences in their respective fields. Questions included items
such as “Please describe what drew you to your field of interest”, “What is your personal opinion about the idea that discrimination against women exists in your field?”, “Have you ever personally been discriminated against?”, “Do you feel that your appearance affects the manner in which you are perceived by your co-workers or clients?”, “Please describe your perception of your role as a woman in the legal field” and “Please describe the expectations you have for your future in your field”. Questions were modified to address specifics related to either those in training or those professionally employed in their respective fields.

Procedure

Initial contact was made with individuals who were contacts of professionals known to the researcher. From each participant, additional contacts were made, utilizing a snowball sampling method. When requesting additional contacts, care was taken to elicit participants from different types of firms (i.e., public and private). Each contact was asked if they would like to participate in a study concerning their educational and professional experiences as women in traditionally male-dominated justice fields. At this time, all participants were informed that the data would be used for the purposes of a Master’s Thesis for the University of New Hampshire’s Justice Studies program, as well as that all information collected would be confidential and anonymous.

Once a contact consented to participate, an interview was scheduled and a quantitative questionnaire was mailed to their home address along with an informed consent form. Participants received instructions to complete the questionnaire in a private setting prior to the interview. During the scheduled appointment, participants were recorded digitally while responding to the above-described qualitative interview.
The questionnaire was collected and assigned an anonymous identification number in order to link the quantitative responses to the interviews. Meetings occurred in various settings, including offices (at their place of employment), coffee shops and libraries. The participant’s recorded interview was then transcribed and labeled with the same identification number for future data analysis, after which the recording of the interview was destroyed to maintain the confidentiality of the participant. The participant was then debriefed and given an opportunity to ask any questions, and thanked for their time and participation in the study.

Interviews were analyzed, first using initial and second, focused coding. Initial coding is a process by which a researcher may set a priori themes, based on previous literature and research questions, or utilize an inductive process by which the themes arise from the data (i.e., grounded theory; Glaser & Strauss, 1967). The research presented here uses both processes of initial coding, utilizing the conceptual framework of the interview questions as the basis and developing new codes as they emerged from the data. Focused coding was then enlisted to create an analysis of the data, examining frequencies of responses, agreement among participants and differences between students and practicing lawyers.
CHAPTER IV

THE LAW SCHOOL EXPERIENCE AND EXPECTATIONS

"Because I am a woman, I must make unusual efforts to succeed. If I fail, no one will say, 'She doesn't have what it takes.' They will say, 'Women don't have what it takes.'"

(Claire Boothe Luce, as cited by Johnson, nd)

**Interest in the Law**

For some women, interest in the law itself was enough to motivate them to endure the lengthy and arduous task of obtaining a legal education. "I've wanted to be a lawyer since I was probably a freshman in high school. I was always interested in politics, and I got involved in campaigning (with my parents) when I was 10. So when I started high school and taking civics courses and politics, some of my teachers said, 'You're going to be a lawyer'. And so I never even thought about it." This was the case for 30% of participants, who knew early in their lives what they were “meant to do”, were told by someone they would make a great lawyer or had a genuine interest in the legal process. "I think early on, honestly, I was told I would be good at it by some people, especially my parents- I think that's what put the idea in my head, and as I continued with it (during undergrad) I guess I determined that I liked it and it suited the way that I think."

Thirty-five percent of respondents were enticed to learn the legal language by the academic aspect of it- "Initially I came to law school because the courses I enjoyed the most matched the study of law; it was the right fit." The decision to enter law school was
often described as “the logical next step” by these women, based on prior coursework in political science, history and many other majors of study. The enjoyment of reading and writing was also mentioned frequently as a reason to pursue a legal education. Some women (25% of participants) were also exposed to the legal field through family members or work as paralegals. “Between college and law school I was a paralegal, I kind of randomly ended up in that career and ended up really liking it so then decided to go to law school.”

A few women had multiple reasons to consider law school- “It was in the family, and I also think that when I was in undergrad I had a minor in political science and I had a class and we were debating something, and there was a male student there who started taking about how women only go to college to find men to marry. Which was infuriating, so I think in the back of my mind was always, ‘you know what? I am going to do what I want to do and hope some day he knows it.’” This kind of activism, as well as an inclination toward public interest and/or social work, was also a consideration for 35% of the sample. “With law you get to delve into a range of questions with a range of people. And I liked that idea better, because I had been looking to get a degree that would allow me to be engaged with people, engaged with issues that I cared about and felt passionately about, and it was also during the Bush years and there was just so much pissing me off that it was hard to think about sequestering myself (to get a doctorate) as opposed to getting a degree where I could go out and do something.”

One woman recalls the time when she decided that law school could help her achieve her goals: “It was actually specific event that happened during a class that I took about women and the law, where a female supreme court justice spoke and several
female grad students spoke about how they were using their law degrees to help women, and so I really thought law school would help me better do what I wanted to do.” This type of realization occurred for several women, especially those involved in social work as professionals or during their undergraduate years- “I actually took a bunch of social work courses, and have always been drawn to human services, and then realized how frustrating it would be to hit a brick wall all the time without knowing what the law was or being able to change the law.” Thus the women in the study often had multiple priorities for obtaining their law degree, and many (60%) had plans concerning how they could practice law differently than what they were seeing from lawyers at the time.

**Equality of Education**

Twenty-five percent of respondents reported that their educational experience was not equal to that of their male peers, citing particular professors who were not particularly fond of female students, academy politics or women being excluded from academically prestigious activities such as their institutions’ “Law Review” (a student-run scholarly journal). One woman noticed a change in the culture of the law school after the position of Dean was given to a man: “I noticed that female professors were not getting tenure, and some of the professors were becoming sort-of, more domineering in their teaching, and calling on the males or supporting and encouraging the males more than the females. So I became more and more aware of it as I came on.” She described a sense of surprise that the new appointment would have such an effect on the students, explaining it as something that “percolated into the student body”.

The remaining 75% recalled educational experiences equal to that of male law students- “I would say in law school all of the professors were very encouraging. It was
a small law school, a local law school, and so the professors were really very invested in where their students go, so I felt very supported in law school and after by that law school community.” The law schools attended were of varying size and prestige, and there were no meaningful differences described by women attending Ivy-League schools. Of those participants who were at least equally represented as women in the student population, many saw things as evenly split between men and women: “I think it was pretty much the same. I think there were female students who worked hard, male students who worked hard, female students who were naturally smart and male students who were naturally smart.” Others report that women may have had some advantages: “Well at that point, the law schools were 50-50, and a lot of times I think they thought we were smarter, which we usually were. And I also think we were a little more driven.” One woman, a recent law school graduate, points to women often positioning themselves as “overachievers” among their peers. She believes this will inevitably lead to more women being taken more seriously, helping to eliminate much of the disparate treatment in the legal workplace.

One law student reflects on the equality of her educational experiences and then identifies (without necessarily acknowledging it) a choice that women, but not men, have to make at some point in their careers: “I think there’s been a complete equality in everything that I’ve done so far. I think it’s more in the future that I anticipate that there will be issues, not because I’m a woman but because of choices that I may make that would put me at a disadvantage- it would be harder to advance my career because I chose to have children.” The next section will examine the expectations of women in the legal
field, describing ways in which they have been met, missed or are anticipated to come into conflict.

**Expectations**

Of the 25 lawyers, 27% felt that their expectations had been met in general. One lawyer explains the ways in which she negotiates the challenges of her job in order to achieve this: “Well, when I started out I was a public defender, I knew that my entire life would be being a lawyer and that I would no longer be a well-rounded person, so my expectations were fulfiiled. People take on being a public defender in different ways, and for me it was about working with clients and trying to follow through with them and make sure they were being successful in life as well as in the small area in which I was representing them. And you know, there’s disappointment, and there’s success, and I think my expectation... I was naive as to what I could accomplish. I’ve learned to, I guess, re-measure success. I mean, I hope I’m not lowering my expectations; I’m just broadening them.” Another woman, now a partner in a small firm, recalls the initial difficulty she faced in realizing her expectations: “I wanted to be a trial lawyer and I wanted to be the best- I wanted to succeed. That’s where I started running into discrimination. I interviewed with some old French firms with their partners who were like 100 years old, and when I interviewed with them, I knew that I would not fit in, and I knew they didn’t like me. I mean, ‘Who does she think she is?’ And that’s when I first experienced feeling depressed about ‘Oh my God, how am I going to find a job working with lawyers who accepted me and thought of me as their peer, their equal, if they are all these established old men?’”
More practicing lawyers than not, however, felt that their expectations had not been met at this point in their careers. Some pointed to an inability or unwillingness to balance a family with a legal career: “You know, I really thought that I would love it; I really was very disappointed. When I started working in a firm I was new but because of the way I looked, I was expected to know what I was doing and put in the long hours. I had kids and a life, it was more than just obligations; I had obligations to myself, and I couldn’t make that work.” Others found that things just hadn’t led them to the type of work they had wanted to do- “When I went into the practice of law, I thought I’d be a lot more involved in alternative dispute resolution and that kind of thing, not practicing law per se, but maybe something different with a law degree.” Based on these drawbacks, some of these women had also determined that being a lawyer was actually a mistake for them, which is discussed further in Chapter VIII.

Forty-five percent of respondents commented on their expectations for their careers as lawyers, but were at the beginning stages and therefore could not predict whether or not they would be met. However, of these new or soon-to-be lawyers, 56% anticipated that their goals for parenthood would be incongruous with a legal career. One law student explains how she has laid out a plan around this conflict: “I plan on working at a big firm for a couple of years, working and paying off my loans. I personally plan on staying home and having kids, and being a stay at home mom when their little; maybe going back after a few years but not in the same way- I want to be able to see my kids as opposed to a big firm which is not that possible.” A young attorney describes her situation in terms of a lack of foresight: “Long-term, I guess I didn’t think a lot about long-term going into it, but now, going into it, as far as expectations, it’s very difficult
going into private practice. I think it can be a very difficult career for somebody who wants to be a mother and involved parent.” The negotiations that women engage in between career and family are more thoroughly addressed in Chapter VI.
CHAPTER V

DISCRIMINATION: A THING OF THE PAST?

"Outside the prison of political correctness, men of all generations do not hesitate to speak of their discomfort and of the resentment they feel toward women, whom they consider to be the great beneficiaries of the last 30 years" (Badinter, 2006, p. 87)

The Existence of Discrimination

Just over 90% of the women interviewed believed that discrimination against women was in existence within the legal field, although they reported little to no experience with it themselves. The majority of them based this conclusion on research they had encountered, while approximately 25% reported knowing a friend or colleague who had experienced discrimination. Although 38% actually stated that they had been subjected to “differential treatment”, only 8% report having ever experienced direct discrimination personally. Several women described instances that certainly fell into harassment, but were unwilling to label them as such- “But the proposal, I mean he tells me this while rubbing my back, it’s unpleasant to have to deal with things like that. So, is it discrimination, I don’t know, it’s more like being treated completely horribly because I’m a woman.”

During the interviews, it was common for women to anecdotally examine instances in terms of whether or not they fell into the legal definition of discrimination.
An example of this definition states: “Discrimination is the unequal treatment of parties who are similarly situated. Discrimination occurs in the employment context when an employer treats one or more employees less favorably than others because of their race, color, religion, national origin, sex, actual or perceived sexual orientation, age, disability, or in retaliation for a complaint made against the employer (“whistleblower”). Note that acts of sexual harassment may also constitute sex discrimination. These include unwanted physical touching, lewd comments, dirty jokes, pornographic pictures, etc.” (Scaparotti Law Offices, n.d.). Interestingly, 90% of the instances described as “differential treatment” or “something nearing harassment” were, in fact, legitimate cases of discrimination according to the definition; sixty-eight percent of all participants reported an instance that could actually be considered discriminatory, regardless of what they themselves labeled it.

Felstiner, Abel and Sarat (1981) describe a three-step process concerning disputes (naming, blaming and claiming) that must occur before allegations of discrimination will be brought forward. In this model, a person must first determine that an occurrence has affected them negatively (i.e., naming) and believe that there is a particular person or persons at fault (i.e., blaming) before they will proceed with formally accusing someone of such behavior (i.e., claiming). After discussing discrimination with the female attorneys, it seemed as if there was hesitancy at all levels of this process concerning their personal experiences; one could speculate that not viewing the last step of the process, claiming, as a real possibility might invoke a sense of cognitive dissonance (i.e., a woman experiences discrimination and recognizes it, but sees the resolution of it as unattainable and therefore denies that the discrimination happened in the first place, or else calls it
something different altogether). Additionally, the pressure to belong in a group, especially for women who have been applauded (personally or otherwise) for breaking into the ranks of the legal field, has been attributed to a reluctance to admit that negative consequences have been experienced because of discrimination (Carvallo & Pellham, 2006; Sechrist, Swim & Stangor, 2004).

It was also interesting to note that the process enlisted to determine if a situation would be deemed discriminatory often (50% of the time) included an evaluation of whether or not it could be proven- “But again, it's what I would perceive as discrimination, but I can't necessarily prove it”. An unwillingness to assert that cases without this quality were discriminatory nonetheless could be symptomatic of a work culture that is firmly grounded in what is provable in court, the main method by which lawyers generate their income. If even lawyers themselves do not believe that their legitimate discrimination and harassment claims are going to be successfully resolved in court, it is no wonder that many other women are also unwilling to move forward with their claims. No students, but 50% of professionals, cited increased subtleties of discrimination as a way that their situations and abilities to combat discrimination have gotten worse, which could presumably be because these occurrences are even more difficult to “prove”.

One participant believed that the majority of discrimination experienced by women lawyers stems from practices inherent in the hierarchy of law and thus legal education: “I think Harvard actually did a study on the status of women there, that women come in with sort of better credentials as far as LSATs or grades, but they often don’t do as well. And I don’t understand why that is. (It may be) that law school still is a
little bit outdated, (using) the Socratic method, the idea that you need overt competition, those are things that in our culture are sort of coded as more traditionally masculine and I think a lot of women are less comfortable with it. I also think that that’s a skill set that while valuable sometimes, they are certainly not the only ones that should be valued, and that we’re doing a disservice not just to women, but the legal profession.” If the aggressive, adversarial methods of legal practice are the favored approach, women who tend to avoid those tactics are at a serious disadvantage in terms of competing for scholarly accolades and later job placements.

Several students not only minimized the experience of discrimination, but also turned it into something that the victim was responsible for managing: “I guess I think that maybe it’s whether it’s viewed as negatively. Granted, I mean it’s not that it’s you know, pleasant to have to deal with, but it’s just that it’s a reality. So if people embrace in that way; it’s something that exists, but how can you change it or fix it for your own self I feel like that might be a more positive way to deal with things and try to make a difference.” Just shy of victim blaming, this stance on this issue admits that discrimination may be “unpleasant to deal with”, but does not warrant special attention because it is just something that happens. Another student did not believe that many claims of discrimination were legitimate: “It seems like everyone on all sides of the spectrum maybe just needs to… relax a little bit. Like, if one thing happens, and it feels wrong, then obviously do something about it. But if something happens and it’s like, I’m not really sure, like, wait it out, it might have been a misunderstanding. I mean I guess to me it’s a clear distinction between what’s right and what’s wrong. If someone is wrong, say something to them, if nothing happens, take it up to the next person. So from my
point of view, the majority of the time it seems as though it’s being called wolf, where it’s not actually that bad yet. But that’s not to discredit the actual real instances.” The major problem with this thought process is that it is not proactive; not only does it assert that a person ought to “wait it out” to see if it gets worse, but it also legitimizes behavior in the meantime, which could have an effect on other women.

Women professionals who had been in the practice for more than 15 years were less likely to report tolerating such behavior—“I remember when I first started and a male associate and I had to share a secretary, and he was not very happy about that. I don’t know if it was because I was a woman, or was it anyone? And I basically had to call him into my office, and say, ‘I know that you’re ahead of me, but we’re going to have to figure this out, buddy, quit acting like a toddler’. And it did get a little better.” The fact that there were so few of these women (who both took a stand against discrimination and had been practicing for more than 15 years) may be an indication of the kind of woman that can endure in the legal field; the participants who had been practicing the longest also enjoyed the highest positions.

Manifestations of Discrimination

“You know, I still get comments, ‘I have that female attorney, that lady attorney’, and what’s interesting is that you never hear someone say, ‘oh, that’s that male attorney’; you never hear male describing attorney.”

Ninety-five percent of participants cited a lack of understanding regarding women’s roles as the primary caregivers in their families as the main way in which women experience discrimination in the legal field. Fifty percent said it is more often harassment (which can legally be discrimination) than outright discrimination, and an
additional 20% specifically stated that discrimination is becoming subtler in its manifestation. Sixty percent of women pointed to gender-based stereotypes that affect women’s work environments through specialization within the legal practice, pay, promotion, the old boys’ network, bullying (even from other women) and expectations about appearance—these provide the framework for the remaining analysis of the narratives.

“I feel if there was a male and a female that are at the exact same associate level, they’re both on the partner track, they both put in the number of hours, you know, both from distinguished law schools and whatnot, you know it seems like a man would be picked before a female to advance in his career, and I just think that that’s what I’ve seen, that’s what I’ve read about… that’s just how I feel that it works. Just because they’re male and it’s traditionally a male career.” “In the academy, I think it’s very prevalent. I think there’s a lot of discrimination against women professors.” Statements such as these, that described discrimination based solely on sex, were rare. Most women felt that discrimination occurred more frequently with individuals of a specific mindset, particularly older male attorneys, rather than a general institutionalized disdain for women: “I’ve felt uncomfortable with other attorneys— I felt like they were trying to bully me frequently, and they thought maybe they could because I was a young female. I’ve had other attorneys who’ve mocked me in pleadings and my level of experience, and … I couldn’t see it happening if I were a man.”

Overt comments about personal appearance, as well as perceived expectations, were mentioned by many women— “As an older man, this particular partner was a very strong advocate of ‘women are supposed to look like this; you’re not supposed to look
tired and be 350 pounds.’ You know, he’s like, ‘she’s so heavy but she’s lost xxx hundred pounds, she looks much better’. And he’s like ‘you look great, what are you a zero?’” The idea that there is a conscious effort to monitor the appearance of women lawyers and the possible effects that this has are examined further in Chapter VII.

Several women described having to negotiate through discrimination and/or harassment in order to find a way to get the best possible outcomes for their clients: “I work with a lot of male prosecutors. My experience with them has been that they are condescending to me, they rub my back, and I don’t know that it’s discrimination, but I’m definitely treated differently. Does that mean that my client gets less of a deal, or a better deal?” These women explain being put in a position where they are forced to decide between refusal of discriminatory treatment or protecting their clients’ best interest- “I had an experience about two months ago where a prosecutor said that he would not entertain what I was proposing, but then said that if I stood in this small conference room with these 12 male officers standing around me and made a presentation to them about this kid (my client) and why I needed this deal for him, then he would consider it. No other male attorney who was there that morning had to do such things, and I was like, ‘Seriously? That is just not going to happen.’” The fact that these people work within the legal system, the determinations of which can have such permanent effects on clients’ lives, is extremely disturbing. It also exemplifies yet another reason that many women are hesitant to call attention to such behavior, as speaking out even one time can have implications for the ability to negotiate terms in the future for many other clients; this can also affect a woman’s ability to be seen as an effective attorney, and therefore her ability to maintain her job.
"I think that what happens in those firms is that a lot of those older guys, intentionally or not, are more comfortable with the younger guys. So even though within the field there is a lot less differential treatment than there would be in the private or corporate sector, I think the way the legal profession as a whole views us is gendered, and I think that's problematic." Participants often described an inability to find appropriate mentors, which can have effects on success in a particular firm and the legal field more generally, as well as decisions to specialize in particular areas of law. "I do think that we have an idea of what it means to be sort of at the top of the legal game that is associated with things that are gendered masculine: being aggressive and competitive, doing court work; whereas things like working on behalf of low-income people are seen as gendered somewhat feminine." Other participants mentioned that women might have chosen those fields due to personal interests in the past, but are now more drawn to them specifically because they will be in a work environment in which they are not the distinct minority. This can have benefits that include less discrimination and harassment, improved mentorship opportunities and more understanding for their roles as caretakers within their families.

**Tokenism and Comparisons with the Past**

Researchers have indicated that people will often use examples of traditionally low-status individuals that have broken societal barriers (or "tokens"), as well as comparisons to other periods in history as evidence of contemporary equality of opportunity for disadvantaged groups (Schmitt, Spoor, Danaher & Branscombe, 2009). Every participant in the study was asked to discuss any areas of improvement for women in the legal field, and 75% enlisted these improvements to reason that discrimination is
no longer something women often have to deal with (despite the fact that more than two-thirds had experienced something which at the very minimum qualified as harassment). About 30% referred specifically to “token women”, including Sonia Sotomayer, Hillary Clinton, Sarah Palin, Nancy Pelosi, Sandra Day O’Connor and Ruth Ginsburg, as well as some local female judges.

“This is why I love Sarah Palin- When she ran for Vice President it was like, if she can do it, she’s a mother of five, has a great husband, has a great life. If she can do all that and she’s running for VP... I mean I’ve always had leadership roles in college and high school and law school and everything, and I’m like, ‘hell, I’m gonna try it’. I guess my ultimate goal would be to one day actually be VP or I don’t know if I’d actually want to be President, because it’s just my belief that I think that I would prefer to have a man in the President position and a woman maybe in the VP position, because I think that I would be too emotionally engulfed in decision making. But that’s just me. Personally I don’t know if that would be across the board for women because Angela Merkel, who’s the Prime Minister of Germany, is awesome and you would never even know that she’s a woman.” Several interesting things came out of this comment in addition to the utilization of a token woman to give an example of what was possible for this law student in her career. First, that she believes that her “emotional decision making” is the product of her being a woman and therefore a similar trait for most women. Consequently, a woman (in this case, Angela Merkel) who does not appear to have this trait doesn’t “seem like a woman” and is an anomaly. The fact that this stereotype (women are too emotional for important decision-making jobs) is so casually stated points to the insidious nature of stereotypes and the way that a woman can readily accept them.
Schmitt et al., (2009) explain that members of disadvantaged groups may focus on token members in order to showcase ways in which the group is positively visible. The danger in such a focus, as well as making comparisons with the past, is that it decreases consciousness of inequality and therefore weakens motivations to unify in support of the disadvantaged group. In Swim, Aiken, Hall and Hunter (1995), both male and female participants who juxtaposed women’s contemporary progress to their situation historically perceived that women face less gender discrimination. Spoor and Schmitt (2008) suggest that women who believe that reduction in women’s inequality has been due to the collective action of women might be more likely to view themselves as a member of that group and therefore continue collective action. A student leader of a women’s law group agrees with this: “I think that a lot more female law students take a more active role... kind of being aware that this exists out there in society so it’s not like you’re blindsided with your first job. So I guess that by being knowledgeable and being proactive, just to accept that the issue exists would help somebody. I guess that we (women) will eventually definitely make a big impact, without people necessarily realizing it right away.” However, if the progress made by women is assumed to be part of the natural course of society (i.e., progress and therefore equality are inevitable), there is little motivation to join in collective action to assist the group (Ellemers, 1993).
"Law is a greedy institution, organized around the expectation that a lawyer will have 'someone at home' to take care of the non-work part of her life. Women’s 'commitment' to law is questioned because they reject it 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." (Reichman & Sterling, 2004, p. 70-71)

A brief examination of some of the statistics concerning pay and promotion in the United States indicated that women lawyers are paid significantly less than male lawyers similar to that of women compared with men in general; they also make up 19% less of partner-status legal positions than all management positions (Bureau of Labor Statistics, 2009; NALP, 2009). The evidence indicates that women are not, in fact, equals within the workforce, especially in the legal field. The question remains whether or not this is due to discrimination, women “self-selecting” themselves out of the partnership possibility or a combination of the two. When discussing discrimination in pay and promotion practices, participants consistently mentioned several factors that have to be considered, including networking, the “Old Boys’ Club”, “Mommy Tracks” and “Pink Ghettos”; these are discussed further throughout this chapter.
Slightly more than 50% of participants thought that promotion differences between men and women were indicative of discrimination against women: “I was a paralegal at a law firm for 2 years, and 90% of the partners were male and 10% were female, versus special counsel, where 90% were female 10% were male, pretty awesome, but they sort of gave the women a consolation prize as special counsel.” Other participants agreed that contemporary promotion practices simply are not good enough: “Certainly there’s women in all sorts of high positions, but when push comes to shove if you’ve studied it all, you’ll find more men in charge of divisions, in charge of departments, and I just don’t think that that has changed enough.”

Many women felt that just the possibility of them having children was enough to hurt their career prospects: “I think the stuff you hear about the ‘mommy track’, that hurts women. It hurts because you always have to answer that unspoken question when you're there for an interview with a male, generally, you can’t ask the question, but it's in their minds, ‘oh you're certain age, are you married, hmmm, let's see how many years I'm going to get before you have that baby?’ And once you have that baby, guess what? It's going to be you, not your husband, that's going to stay home and take care of them. ‘How many good years am I going to get out of this woman, hmmm, am I willing to take her versus the guy?’ The idea that they would not be as committed to the firm is something with which many participants struggle. On one hand, they feel a responsibility to family, while on the other, they want to be able to achieve whatever success they can in their careers. One woman that has been practicing for nearly twenty years as a prosecutor recalls, “I’ve been asked questions that I don’t think a man would be asked,
including my marital status, things about my children, what I'm doing with the rest of my life. These questions come up in job interviews and job performance evaluations.”

Twenty percent of participants specifically cited differences in pay as examples of discrimination: “Transparency is such a built-in problem, I mean, for some of us we’re really in a bind. If we try to push it, we risk losing our jobs; we’re thought of in a certain way. Have you heard of the Lilly Ledbetter case? That’s really screwed up -- I mean, we’re in a really bad position right now. We can’t ask for the transparency because it's supposed to be, but without the transparency, you have no clue. So in that way I feel sort of boxed into a male-dominated system. And I can’t figure out how to get out of that. I think it’s really hard.” This inability to “ask” for transparency is another example of the “fine line” that women have to walk, or risk being labeled as a “troublemaker” and pushed out of their jobs. A few of the law students intimated that pay differences among male and female lawyers may have something to do with the choices of women to leave practice in order to have and/or raise children. Researchers, however, have not provided evidence of this. In fact, even when controlling years of practice for income, Reichman and Sterling (2004) found that a significant gap between the earnings of men and women still existed. Even after 10 to 20 years of practice, female attorneys made approximately 76% of the average income for male attorneys. Thus even among those women who do not “self-select” out of the possibility of advancing, a disparity in pay still exists.

**Networking and The “Old Boys’ Club”**

Many participants believe that the “Old Boys’ Club” was alive and well, and had serious implications for women’s abilities to network: “Comparatively speaking, discrimination is a lot less, but I would say the ‘old boys’ network’ is still pretty strong.
There is still discrimination; women still have a harder time getting to the top.”

Networking is a method by which lawyers obtain referrals (and therefore business for their firms) as well as establish working relationships with other lawyers. Their levels of productivity, coupled with their ability to maintain these working relationships, can have an impact on their status (and therefore promotion possibilities) within the firm. It is not a surprise then that one of the issues that women described facing was not “fitting into” this club that seems to be reserved for men. Just under 20% of participants described feeling “alone” as a woman in the legal profession, while over 25% had felt pressure to “act like a man” at some point in their careers- “I used to think about that when I was a prosecutor, and I don’t know if it was self-imposed or what, I did a lot of court work so I was always one of the only women. There were some women public defenders but the defense bar was all men, the judge was a man, clerk was a man, and I was shorter, so I just remember being in court one day and it had sort of a high bench. And my chin was just at it and everybody was tall, and I’ve always remembered that. And I thought to myself, ‘I felt alone’. And when I first started prosecuting, and I think women tend to succumb to this, I tended to be overly aggressive, sort of outside my nature and I thought back to a class I’d had in law school, and I remember the professor had said when you practice law you have to do it within your personality in order to be effective. And that suddenly hit home to me and I changed how I operate and I did become more effective, instead of being ‘I’ve gotta be louder, I’ve gotta be bitchier, I’ve gotta be more aggressive than my male counterparts”.

Mentorship and Camaraderie
Fifty percent of participants expressed feeling as though they were treated badly by other women within the legal field specifically because they were themselves women: "I think women are harder on other women. I think women judges are harder on women lawyers. I think women co-workers are harder on other women in the workplace. Certainly that was my experience." Others felt that there were some women in particular that were more likely to act in ways that were harsh toward women specifically: "You know I think that’s probably true, I have these sort of categories of different women: there are the supportive, tough and self-sufficient women who sort of feel joy in other women’s success, and can support it and validate it and be there for them, and then there are some women who are insecure and competitive, and can be undermining, and really hard on other women." One lawyer admits that she can be tough on other women, but only when they resort to certain tactics: "Although, I have to admit, that I am hard on female lawyers who flirt to get what they want- I really, really hate that. Because it’s put all of us in a position that makes us look like... it presents an expectation- these police and prosecutors are expecting us to use that as a means of negotiation."

Of the 50% of the entire sample that thought women were harder on other women, half recalled being treated differently than male co-workers by female support staff: "When I was in the public defender’s office the lawyers and female support staff would constantly clash, because of that.” Some participants felt that the treatment by these women (who make up the majority of legal support staff) had adverse effects on their work: “I know the other area was dealing with the secretaries. We all had computers, but there were still secretaries, you didn't do a lot of your own word processing (then). Female secretaries had a great deal of trouble taking orders from you.
I mean my stuff; I'd watch it, bottom of the pile, bottom of the pile, bottom of the pile. I'd have to call them in, which didn't make me any more popular than I was when I started."

Twenty-five percent of the women interviewed expressed concern over the fact that they had difficulty finding a mentor (especially a woman) within their firm/organization. For example, as described in a previous section, one woman believed that the older male partners actually felt more comfortable with the younger men, and therefore did not spend as much time mentoring young female attorneys. She described the challenge that this created for a peer: "while interviewing for jobs (she) came across a lot of difficulty, because she was a woman. I think that's more kind of a bigger firm mentality, where there's more focus on the 'Old Boys' Club'; partners there are all male, you're lucky if you have a female partner that could be someone you look up to and respect." The benefits that women feel from having other women in the legal system, especially those in positions of authority, were explained by one young attorney: "Where I ended up as an attorney, I met two women through a local association (it's called Inns of Court). As participants they said, 'come join us at (this firm)'. So there wasn't really a formal interview; it was more my participation and talking to them informally."

**Sexual Harassment**

Sexual harassment was rarely discussed without some reference to the "Old Boys’ Club". In general, women felt that this network promulgated sexist ideals and provided a covert manner in which men could maintain these attitudes. A law student described the atmosphere and first impression she got from one firm she interviewed with: "There was one interview that I had that was really creepy where the guys basically asked if I was
single, but they have a reputation for being very slimy. My guy friend took the job that I didn’t end up taking, and the first day they took him to a strip club- wouldn’t have that been fun?” Slightly less than 40% of women interviewed reported blatant sexual harassment; 25% also reported comments about appearance. One woman who experienced such behavior believed that it would be extremely common: “I was on the parole board, we had lots of discrimination at the prison, you know, sexual comments, and that stuff -- that was almost a daily thing, but yet I was vice chairman of the board... the comments there were unbelievable, but you’ll probably hear a lot of that.”

As women described their experiences with sexual harassment, many of them described the process they engaged in to deal with the behavior, or lack thereof: “There was a time where I was definitely sexually harassed by a male lawyer (at a public law office), I was 26 or 27, it was really, really inappropriate, and I never said anything to anyone. He started talking about his sex life around me, and it was really uncomfortable, and he starting talking about things like whether a bra strap was showing. I also just felt, I’m very young, I’m not going to be here very long. It’s not something that’s affecting my work because I can just walk away, but it was uncomfortable, but I wasn’t really sure how to deal with that- I probably would deal with it differently now, but that was really uncomfortable… Except, I do remember hearing things at another (public) office from other female attorneys about issues between male lawyers and female lawyers and sexually inappropriate comments, so it’s definitely there, and I think it just depended on the sense of the woman and how they handled it on their own.” This idea that the situation required one to “handle it on their own” was common; not one of the women who experienced sexual harassment ever reported it.
A few of the students felt that people needed to “relax” about situations that they had been reluctant to call harassment or discrimination; they believed that it could often be caused by a misunderstanding and that women overreacted. Sadly, this is the message that perpetrators of discrimination and sexual harassment are often heard using in their defense. Women in many cases have been accused of misinterpreting “compliments” as sexual commentary or inappropriate comments as a misguided attempt to get a date. “I always felt that I had to find a way to diffuse the situation; to keep it from getting to a point where I would have to say ‘no’ to a sexual overture, so that I wouldn’t offend or embarrass them.” The only woman who reported actually telling men that their behavior was inappropriate believed that it was a necessary thing to do. She described a feeling that if she did not verbalize her complaint to them, it would be an internal thing and therefore a problem with her, not the man doing the harassing. Perhaps it is because women do not have a voice to challenge the harassment that they are most likely to internalize the conflict.

**The “Mommy Track” and “Pink Ghettos”**

The ideals of the "wise counselor" and the "well-rounded generalists" have been abandoned. Instead, "early specialization and relentless time pressure mock the aspiration to be more than a technocrat." (Harvard Law Review, 1996, p. 13790

The participants discussed the concept of the ‘mommy track’ as a process by which women were given a “consolation prize” to partnership because of the fear (whether real or imagined) that they would become pregnant and abandon the firm for their families: “It seems that there’s some reluctance (to hire) because women have kids. It seems that there is a divide, (but) after you get a job it’s not an issue. I think that
employers are likely to see women as wanting to have children and not necessarily a long-term employee. Women's careers are just not as stable; they might come for five years and then leave for five. You lose the ability to say, 'I've been practicing for this many years' because it's almost like starting over when they come back.' On its face, the "mommy track" may appear to have a somewhat benevolent intention in that purports to "allow" women advancement opportunities despite their inability to compete with most men in terms of hours. The problem is that this treatment represents a compromise that identifies women as different and inferior (Harvard Law Review, 1996). The message seems to be that women are now "allowed" to practice law, but the fact that society expects and wants them to take care of their families as well is not a consideration in the legal field. Thus the burden again falls back to the women, who are forced to decide between pursuing a career and caring for their families. This choice, however, is not completely theirs; women must consider their partners' goals along with their own and balance this with pressures from the larger society about what is expected of them.

It is not surprising then, that some women "choose" not to seek positions of power within the legal field and instead are content with balancing both family and work expectations: "I think there are certain women who may not want to advance necessarily, the way that some men do, and maybe because they have family, maybe they just don't have that mentality. I think it's hard to differentiate between women who want to have the chance for advancement and don't get it, and women who are just okay where they are." Many participants described difficulty in determining whether women in general did not want to subscribe to the lifestyle or were actually denied the opportunity. This differentiation seems moot however, as a choice is not really involved when one of the
options is almost impossible. This impossibility is discussed further in the section concerning work/life balance.

In addition to the 'mommy track', women often feel as if they are more inclined to do certain types of legal work: “I tend to feel like maybe the pattern is that more females would do more social work kind of with their legal degree than males would, (although) I'm not saying that they (men) wouldn’t or that it’s impossible to find them.”

As women have gravitated toward specific types of legal work, they have become gendered. ‘Pink ghettos’ describe the types of work that are done primarily by females, and subsequently are less respected and less well paying. Examples of such gendered specializations include family and non-profit law, as well as legal writing positions within the academy. Despite the fact that family law is a large, necessary aspect of legal work that brings in large amounts of money it is not as highly regarded as other types of practice (i.e., the prestigious area of criminal law). Hunter (2005) questions why this could be, given the busy, court-oriented and profitable nature of family law firms (the same reasons that criminal law is esteemed) and concludes that it is because it is considered ‘women’s work’. One woman describes the difficulty up-and-coming women law professors face: “For example, legal writing is a pink ghetto, and they pay them less. Women are more likely to be pushed into those types of positions than tenure-track positions in the academy, and that department is really treated as second-class citizens (despite the fact that legal writing is really hard work); they are undervalued and underpaid.”

The consistent themes regarding how women find themselves on the ‘mommy track’ or in a ‘pink ghetto’ revolved around pregnancy and the idea that women need to
balance work and family life. It may be that women find themselves drawn to these areas or positions because there are already more women in them; it may also be that they see it as the best possible option for them at the moment.

**Pregnancy**

When asked about the barriers that women face in achieving equality within the legal profession, 77% of participants believed that pregnancy was a huge issue. The difficulties they specifically pointed to included instances occurring at the initial hiring process (i.e., potential employers believing that their decision to have children would eventually have consequences for the firm) and continuing throughout a woman’s entire career (i.e., losing status, losing promotion potential and even losing jobs). Many women felt that this was unfair, and that there were viable solutions to the “problem”, as evidenced in this quote: “I think it's always lurking; ‘will she become pregnant? Maybe not now, but will she have the baby and make that other choice?’ And making that other choice is somehow seen as being threatening, rather than doing a job share among two people and end up with somewhat better coverage. In my mind, those are better options. And men can’t have babies; one of us has to do it. And we want our babies to be loved and well adjusted. And it’s not that this job share idea is as good an option it's better.” Other women felt that there was a double-standard in place as far as the expectations for women in society: “Well now that I’m thinking about it, just the fact that it’s up to women to start a family, so it’s just the multiple priorities of women, and that’s not fair. You can’t have both of everything all the time.”
Researchers have shown that the negative events and conditions women can experience in the workplace concerning pregnancy are associated with poorer psychological well-being, and that high occupational status did not insulate women from these occurrences (Cooklin, Rowe & Fisher, 2007). Consider the reactions and commentary of others about this prosecutor’s choice to have four children: “People made lots of comments, and I think this is true of other women, particularly when I had more than two children; inappropriate comments like, ‘didn’t I know about birth control?’ ‘Didn’t I know what caused that?’ And you know, again, it’s subtle and not so subtle forms of discrimination.” Pregnant women have been shown to be less likely to be hired than a non-pregnant candidate (Masser, Grass & Nesic, 2007), and participants seemed to be aware that it could potentially be a problem within their firm- “It’s hard for me because at my firm there aren’t a lot of full-time working mothers as role models as partners. That makes me nervous, because I don’t know if it’s coincidence or something more than that.”

In addition to the double bind that women described feeling concerning motherhood and career, a few participants reported examples of treatment of pregnant women that seemed unfair. One woman does not deny that she was being treated equally in every sense: “For the most part, in court, I’ve always been treated fairly equally. I remember being 9 months pregnant WISHING the judge would let me sit down (in this state you have to stand when you address the court- that’s not true in every state). And I was thinking, ‘can’t he see that I’m about ready to fall over?’ But, he was treating me ‘equally’”. Another participant shares the experience of a colleague: “I know of a peer who was about eight months pregnant, and the court would not grant her a continuance of
a hearing and she was two weeks away from delivering a baby, and very uncomfortable,
and all sides had consented to it, but the court just said no.” In both of these cases, the
message seems to be one of contempt- “you asked for equality, and so now you have it-
find a way to deal with the consequences”.

Work/Life Balance

“A lot of the male lawyers - some of them were incredible: ‘what are you doing? You
should be home barefoot and pregnant. You should be home with your husband. You
should be having babies. You shouldn't be- this is a man's world’. You know, that kind
of crap.”

Over half of the women interviewed discussed the multiple priorities of women:
“I don't know any men who are intending to take time off to plan a wedding, or have
children, or raise children, or anything to that effect. I don’t know more than a handful of
women who don’t plan to have children and take time off and spend time with them.
And that’s certainly my plan sometime down the road, not necessarily this year or next
year but maybe five years down the road.” This conversation often included a
recognition that many women are choosing to leave the practice of law rather than trying
to make it all work: “Although I think there may be a large percentage of women who
have left, and this may be personal choice, it may be lifestyle, that ‘I don't want to do
this- I don't want to have this workload’. And I think women are not as hardwired with
this sense of an identity through job. And we have come to the point where we're striking
a balance between our families and our jobs, and that's okay. So maybe we're not taking
those high-level jobs. I don't know. I think that the more those women are in higher
positions, however, it may be easier for other women.”
The culture of law firms came up frequently, and women felt that the expectations for lawyers in general were both unnecessary and unhealthy: “Because young women out of law school have so much debt, they have to take the job that the big firms, and they become part of the culture— the male culture, which still isn’t over, about working 80 hours a week. And it’s expected that you should sacrifice your personal life and your family life because you have to pay your dues and work those hours.” This comment echoes the sentiments of several participants and reflects the unfairness of holding women, whose situations are vastly different from men’s, to practices that have been shaped in traditionally male-dominated occupations. As part of a two working-parent home, one woman felt that this culture expected too much from both men and women: “You know the one part that I think is just going to be really hard is with the family situation with two working parents. And it’s always assumed that mom is going to take care of all of it. I think that our society needs to do a lot better job at supporting working families, because the expectations from schools, the workplace is that this is 9-5 and your kids aren’t part of your life 9-5 and that’s just not the reality. I’m not sure we’re at—we’re in a different place, I’m not sure it’s a great place.”

Connell (2005) examines the challenges of women’s work situations with respect to economics, and concludes that “market ideology” necessitates the reframing of gender equity in terms of its ability to create profit, as opposed to something that people ought to do “because it’s right”. In this way, law firms can see the business side of gender equality and view accommodations to women’s multiple obligations as an investment in the firm. In particular, the provision of daycare, especially on-site daycare, is something that many mothers (or women who expect to be mothers in the future) thought would be
an ideal solution to many of their problems: “You know, incentives -- you get your healthcare, you get your 401(k) -- I feel like there should be some kind of incentive for childcare as well. I'm not saying they should pay all of it, but help you out, at least help to make it possible.” Another woman explained the missed opportunities because of childcare concerns: “I think the only thing for me that I'm very much aware of is being a mom at the same time, I think that it's very difficult. They have these various associations to do with lawyers and they all meet at night, or there will be these weekend events and I think it's all very difficult for someone who's trying to balance a family. The ability to network for a mom is much harder, so you sort of get shut out from certain things because of that. Even the Bar Association is (a long drive), and they have all of these meetings from 3:30-5:30, and I have to pick up my daughter at 5. So, it becomes almost impossible to go to a lot of these meetings even though it would be an excellent opportunity for me.” Her inability to network and expand her working knowledge could very definitely be hurting her firm’s prospects for business, as she is missing out on potential referrals from established relationships with other lawyers.

Another way that women felt they would be given more flexibility to take care of their families and manage their careers included creating different paths to partnership: “I would say that we still haven't gone nearly far enough in terms of work-life balance and the ability to achieve professionally while still being able to raise a family. A lot of firms are doing alternate partner tracks where you can take longer and work a reduced number of hours each year, though I really don't think the jury is in yet as to whether or not people who do that are sort of treated as second class citizens.” In this way, women would have the opportunity to help raise their families, while at the same time furnishing
their unique leadership skills in their careers. If women are allowed to contribute in this way, both gender equity and the legal field would directly benefit.
CHAPTER VII

THE INFLUENCE OF THE MEDIA

It is not difficult to think of a few examples of media portrayals of lawyers, especially in television shows and movies. Depictions of women lawyers have increased as women’s representation in the legal field has increased, though not to the standards of most of the female attorneys interviewed. They felt that, in general, the legal profession was misrepresented through glamorization and stereotypical assumptions about the personalities of lawyers and their lifestyles. The majority of women interviewed felt that this was typical of most professions and admitted that it is necessary to romanticize situations in order to live up to the dramatic expectations that people have for media. They pointed to several issues (i.e., sexualization, gender bias) created by these portrayals that they felt impacted their everyday lives and experiences within the workplace.

Stereotypes and Objectification

Women are bombarded with messages about their appearance through every aspect of the media to a far greater degree than men (Strahan, Wilson, Cressman & Buote, 2006). The effects of these messages have been studied by researchers interested in the consequences that they may have for women’s self-image (Gurari, Hetts, & Strube, 2006) and self-esteem (Joshi, Herman, & Polivy, 2004), which can have serious implications for their job performance and workplace efficacy (Quinn, Kallen, Twenge & Fredrickson, 2006). Women are constantly forced to manage their social images in ways
that men are not, which may have an impact on their ability to be considered equal and to perform equally (even in their own estimations). It is no wonder then that the women lawyers interviewed felt that the media painted an inaccurate picture of what women lawyers look like, how they act and what they do on a daily basis. Many participants felt that lawyers in general were portrayed in a negative light, but also that traditional gender stereotypes were magnified on television. A majority of the women also believed that these media portrayals had an effect on the ways in which the public viewed them.

Many of the women interviewed felt that there were far fewer representations of female lawyers than male, and that the women lawyers that were presented were either overly aggressive or unrealistically seductive: “I certainly avoid most of those legal shows, they just frustrate the hell out of me, I know that some of them are complete bitches, and some of them are wearing pretty little short skirts... I don’t think there are many normal people on tv- they tend to go to the extremes.” 90% of the sample believed that the clothing that most female characters wore to court was often not appropriate. When asked how these portrayals might become more realistic, one student said, “I mean just, having more average women; on tv she’s probably wearing like a garter belt or a corset underneath her suit.” The sexualization of female attorneys was offensive to some lawyers: “Most of them that you see are the long limbs, long haired sexy female and I think that's what people expect and that's demeaning.”

The women employed as law professors felt that the media portrayals did create unrealistic expectations regarding what life as a lawyer was really like: “I think the day-to-day is a lot more mundane and a lot more work. We don't solve our problems in a 45-minute episode. I think the behavior that gets ratings is not what this profession upholds
as appropriate. You know, the screaming and yelling fighting all that good stuff.” They also mentioned that they felt that young women in their classes were often dressed inappropriately because of some of the messages they are presented in the media, regardless of whether or not those messages were specific to lawyers.

Participants often felt that portrayals of particularly successful lawyers almost always invoked several negative stereotypes beyond generally aggressive behavior; they felt that these women were depicted unfairly as “cold-hearted”, “ruthless”, “romantically challenged”, “deceitful” and “as a shark”, whereas male lawyers were celebrated for that kind of behavior. One lawyer spoke to this: “I think the media tends to feed this idea of an aggressive woman lawyer, who’s the shark, or a bitch or whatever, and I think they feed that stereotype a lot. I think if it was an aggressive male lawyer, they would think, what a great lawyer, but when it's a woman, she's a ‘shark’. A male would get the title of a great advocate, but not a woman.”

**Appearance Standards**

The legal profession has always maintained a very conservative appearance, having its roots in a system where judges and lawyers alike wore actual costumes (i.e., robes and wigs) to conduct the daily activities of the court. Today, many women lawyers still feel that traditionalism in the appearance expectations with which they are presented, although these expectations often come into conflict with the manner in which women are treated. For instance, women are expected to remain modest and covered when they appear before the court; cleavage is frowned upon, but “showing leg” (in a skirt) is still an unwritten rule in many courtrooms. In short, women are expected to make themselves appear attractive without being too attractive (and therefore distracting). As women
described the pressures they feel around personal appearance in their work environments, they often questioned this double standard in roundabout ways. Although no one participant explicitly pointed to it, it was often the case that women would simultaneously describe feeling pressure to look attractive, but not stand out in the office. Women must maintain “femininity”, but not appear too sexy and be friendly and open to commentary by male colleagues and superiors about their appearance (even sexual advances), but not use their looks to manipulate situations to their advantage.

Eighty-five percent of respondents believed that their appearance affected the manner in which they were perceived; this was more so the case for clients’ perceptions, but also included co-workers perceptions about 60% of the time. Women felt that there were more expectations for women than men around clothing, hair, makeup, jewelry and even nail polish. One student describes this pressure to change her daily appearance: “I think I do feel to some degree some pressure to try to make myself appear attractive, or put myself together. I generally don’t wear makeup but when I started working at a law firm I did start wearing makeup every day because I felt that there was some expectation either personal or otherwise, to look attractive or look good.” This student readily makes the relation between wearing makeup as a necessary condition for “appearing attractive” or “looking good”, which is a testament to the many messages women receive about appearance. Another student described feeling as if they had many more steps to negotiate in determining what to wear to an interview, and that this could have consequences for her job prospects: “It seems like there’s a lot of jumping around in the obstacle course that you have to do... Maybe other people don’t have to worry about ‘what are you going to wear to your interview?’ Hair down, hair up, big earrings, small
earrings, skirt, pants, whereas a guy can be like... ties don’t change the image of who they are, you know they’re not going to be like ‘oh I picked the wrong tie’”.

In contrast to 100% of the students interviewed believing that makeup was a part of their legal attire, only 20% of professionals reported always wearing some kind of makeup to court; in general, however, the majority of professionals considered mascara enough makeup, while students described wearing much more makeup. Many lawyers felt that this contrast might be symptomatic of a generational difference, and indeed the attorneys who placed more emphasis on makeup were closer to the average age of the students than the professionals: “I’ve never personally felt like I had to be sort of polished in terms of nails always done, makeup always perfect, everything always coordinated. My classmates, for the most part, also were not like that. None of the women I’ve worked with were like that. So that may be a different culture.” Indeed, as media messages have continued to increase their conveyance of the expectations around women’s appearance over the years, it appears that the effects are becoming more apparent with subsequent generations (American Psychological Association, Task Force on the Sexualization of Girls, 2007). This difference might also be related to the fact that so many of the students had a familiarity with legal portrayals within the media, while most practicing professionals admitted that they did not have much exposure; this increased exposure is also true in terms of the general population (Roberts, 2000).

Several students also mentioned attempts to alter their appearance in order to be perceived differently (i.e., taken more seriously). This included making themselves appear older or more sophisticated by wearing more makeup, fake eyeglasses and high-heeled shoes. A few also reported changing, or contemplating changing, their hair color.
to darker colors to avoid being labeled a “dumb blonde”. Although these students presumably had little practice in the actual courtroom, one professional gave an example that showed their fears to be real: “I think, and I don’t like this, and I’m hoping I’m wrong but I think sometimes I get more attention because of the way I look. There used to be a judge who had bleach blonde hair and long nails and you know, that was all that anyone ever talked about. And she was a very good judge, very thoughtful and smart and hardworking, so I don’t ever hear men getting talked about by their looks. So I definitely think that happens with the public and the people that come into the courtroom.” Another professional reports that her appearance has absolutely played a role in getting business for her firm: “I mean, this is sexist, but I’ve had clients who looked me up on the Internet and came in and when they set down with me say, ‘oh, I like the way you looked in the pictures so that’s why I came in’. Just kind of weird, but I mean, it got them in the door. What am I supposed to say?” As explained by this lawyer, the situation is flattering but also seems out of place. It is evident to her that this is not how it “should be”, and possibly not what she was intending, but she struggles with this conflict because it provided a benefit to her.

One particularly salient theme within the discussion of appearance was that the expectations of men and women were strikingly different, and most women felt that this was unfair. They also felt that, while they were uncomfortable with the expectations, they might not be symptomatic of the legal profession per se, but rather a larger cultural effect. It becomes a consideration in every aspect of their practicing lives, but this was more so the case for women in private practice and particular specializations (i.e., criminal law) versus those in non-profit and public positions, which tend to have many
more female attorneys. One woman, dressed very casually in flip-flops, black pants and a sweater, explains that she considers several factors before dressing for court: “Certainly in court, I'm a big believer in always being in a suit, depending on the judge I might think of skirt suit versus pantsuit, honestly, I might think about pantyhose versus not. My hair is pulled back. And I think that that does matter. Clothing and appearance are pretty key signifiers in our culture, and law is still very traditional.” She explained that she was not seeing any clients that day although she was in the office, and so she did not have to “dress-up”; this was more often seen in law offices that were occupied by a higher than average number of women those in the previously mentioned male-dominated offices. Most of the women readily admitted that they were inconvenienced by the informal rules around their dress and/or appearance: “It takes more time to get ready in the morning, which I find annoying... I wish I could just wake up in the morning and throw on clothing and leave the house, and that would be fine. I guess I could cut my hair in a different way and that would make it easier to leave in the morning, or something, I don’t know- it’s just a hassle, or something else to deal with in the morning, or something else to think about. And guys don’t have to do that.”

An issue concerning attorneys’ attire that remains particularly contentious is whether or not women ought to wear skirts rather than pantsuits. Despite the fact that mandating that women wear clothing that is different from men’s attire is absolutely prohibited in any profession, women lawyers report informal sanctions from coworkers, superiors, judges and even juries for failing to comply with this (often unarticulated) rule. A young attorney recalls, “I remember hearing stories (while in law school) about a Supreme Court judge up there who would not let women in his courtroom if they were
wearing a pants suit. So, I mean, that wasn't very long ago. So I think that even though I haven't necessarily experienced it that I can recall, I think it exists. You know, I think that's discrimination, women should be allowed to wear pants suit, especially in the winter when it's really cold.” Fifty percent of participants described being told to wear a skirt rather than pants suit. With the law students, these instructions came mostly from career service centers at law school or firms with whom they were interviewing: “I’ve been told by different firms when I would go on interviews not to wear pants. They’re like ‘absolutely you need to maintain your femininity and wear a skirt suit.’” With the practicing lawyers, it was more often experienced dealing with a particular judge (as previously described) or professor in school: “I had this professor, who was (he ended up getting fired, I think) he was my first year legal writing professor, and he was horrible, but... at the end of the semester we had to present an oral argument for the first time; he told the guys they could wear suits with this shirt and tie, and he told the women that we could wear a suit, but only a skirt suit. And, that’s sort of common -- you hear that a lot.”

Surprisingly, more students than practicing lawyers had been told that women should always be in skirt suits, and some did not have a problem with the idea: “I know that personally I think women look more professional in skirts, they look less like a little cardboard cutout, or look like a man. Women are women, they’re supposed to look cute and petite and sweet, powerful, but... certainly I would say that the expectation is increased for the female associates and interns.” Although this statement was fraught with stereotypes about women, the main message seemed to revolve around the idea that skirt suits might have gotten a “bad rap” by previous generations of women lawyers as a consequence of not being given a choice. Professionals, in comparison, did not always
mind wearing skirt suits but acknowledged that it was a consideration: “I argued in front of the Supreme Court for the first time in January and I wore a skirt. And it never even occurred to me to wear a pants suit—although my opposing council from the Attorney General’s office was wearing a pants suit, (by the way, a female). If I was going back I probably wouldn’t think twice about it, but my first experience I was going to be wearing a skirt. And I think in my head I was just thinking, ‘these are older, male judges who have been around a long time’, and I just wanted to be able to put everything—I wanted to win. If that was going to be an issue I didn’t want it to be one. So I wore a skirt just in case, I guess.”

Women who had been practicing longer than the average described the struggle that women had to endure for many years before it was common for women to wear pants: “I felt I had enough power and was well liked within the firm to be able to wear pantsuits, but I got visits from the partners, who did not feel it was appropriate because it could affect how a judge or client saw me. And I finally got a visit from the only female partner and she said, ‘what are you doing wearing pants? You’re the golden girl, you’re sure to make partner—why are you putting that at risk?’” After it was no longer possible to force women to wear skirts to the office, it seems that the focus remained on the perceptions of judges and the public. One partner in a law firm explains the shift in thinking from her perspective: “There was this whole thing with these jury surveys, for a while we were told to not wear pants, because juries don’t like women wearing pants. So that was the way it was for a while, and, like I said, the more experience you gain and the more confident you get, then you can just say, ‘screw that, I’m not doing what someone
else thinks. I'm going to be myself. And if I want to wear pants, I'm going to wear pants.’ And you know what? The juries were fine with it.”

It does seem curious that students would believe that wearing skirt suits was an “unwritten rule” despite the fact that most practitioners, while they acknowledged it could still be an issue, preferred mostly to wear pants. It was also interesting to note the differences in emphasis placed by students on maintaining a certain appearance versus practicing attorneys who acknowledged that there were expectations, but rarely reported (or appeared to) accept those expectations as legitimate. The lawyers thought that it could partially be explained as a “cultural difference” (i.e., a law school in a more urban setting), although the students based their conclusions on experiences in several different states. Another explanation could be that a younger generation of lawyers, inundated with media messages about their appearance, has started to internalize those messages and acknowledge them as another aspect of the legal system to which they need to become reconciled.
CHAPTER VIII

WOMEN’S PERCEPTIONS OF THEIR ROLE IN THE LEGAL PROFESSION

Participants were asked to reflect on their choice to become a lawyer by examining whether they felt they had made a choice that felt “right” for them as well as what they considered their role to be as women in the profession. When asked, “do you ever feel as if you’ve chosen the wrong field?” women responded in several different ways. Nearly 65% of the participants said that yes, at one time or another, they questioned their decision either because they didn’t feel as much enthusiasm as they thought they might- “Oh yeah, you know, you have the fleeting moment. My husband is a pilot and it’s a passion. I think that law is a challenge but not a passion, but all in all I’m satisfied”, or because it can be mentally and emotionally challenging: “On bad days, but never seriously. I think I’m proud to be a lawyer. Certainly it’s not always easy. I highly doubt my career path will be linear.” Thirty percent of these women sometimes felt that they had bitten off more than they could chew, so to speak, with regards to being able to have a family: “Yes, everyday, and it terrifies me because I’m now looking for jobs, and I have no idea what I want to do. Luckily I have another career to fall back on. The hours worry me; I don’t know if I want that lifestyle, especially if I have kids. So the lifestyle is probably the biggest thing.”

Fifteen percent of the sample knew that they had definitely chosen the wrong career. Three of these women had chosen alternate career paths in which they were still
able to utilize their law degrees, but one in particular articulated her inability to have the career she felt most drawn to: “Oh yeah. I know what I should have done and now I’m too old to do it. I should have been a nurse midwife, and I’ve known that for a long time. When I graduated high school it was right at the time when the women’s movement was really starting to catch hold, and I was smart, but the Ivy league schools weren’t available to women. And I should have been a nurse, but at the time, it was no, if you wanted to go into the medical field, you should be a doctor. And so I never even considered it until much, much later.”

One participant, who was happy with her career choice, stated that she knew many lawyers, male and female, for whom this was not the case. She felt that they were unhappy with the realities of the profession and the consequences it had for many aspects of their lives. One student contemplates exactly this issue and how it might affect her—“There are times when I’ve questioned whether I have or not. I mean, I don’t necessarily think that… I think at some points it’s going to be difficult, or a challenge, with the hours that you have to put in to have the kind of life I want to have. Sometimes I question whether I’d be able to do it all, but…” The focus for many participants on time (i.e., not having enough of it to raise children or even in general) was often described as something that was a challenge for both men and women. The participants often felt that the legal field as a whole placed unrealistic expectations on its lawyers and judges.

Participants were asked explicitly: “Could you please give a summative statement concerning your perception of your role as a woman in the legal field?” at the end of the interview. More women than not needed significantly more time to answer this question than the previous questions. As a whole they expressed some very thoughtful hopes for
their careers. Fifty-seven percent of participants felt that their role as a woman in the legal field had aspects that were different than that of a man. The remaining 43% stated explicitly that the two sexes had identical roles: “I don’t think there’s any difference between what my role would be as opposed to a man’s role; I don’t think there would be a different expectation of my work product, I think that I would have to have the exact same work product as a guy. I don’t think I’d get any special treatment being a woman or not being a woman or vice versa being a guy or not being guy. I think as long as you’re there doing what you’re supposed to do, I don’t think there’s really a difference.”

Despite the fact that they did not feel there was a difference, all of these women described examples of discrimination that were current and real at some point in their interviews. This was also true of the one participant who believed that discrimination was absolutely not a problem that women lawyers of today were faced. Another student admitted that she may face obstacles, but she was confident her abilities would allow her to overcome them: “There definitely are challenges out there, which at this point I think that most people should (be) or probably are aware (of). I don’t necessarily know that it’s going to make it that much harder for me to get a job right off the bat, because I’m a woman lawyer, but like I said before, it’s a reality. Maybe it’ll play a part, maybe I’ll have an experience, but I think that if I’m about to show, which I feel like I can, I mean, I’ve been through the same education as everyone else, as long as I can show and be able to dictate that I can get the job done right, I don’t think that it may play the biggest part-just being a woman.”

Of the women who did find unique potential in being a woman, several participants described feeling compelled to show that they were just as capable as men,
despite having a different approach: “I used to think, ‘well I’m going to have to show I’m tough as a woman, to be respected’, and I think that’s not the case. I think you can be a really well respected female lawyer and just be your own personality and not be overly aggressive, and I think in terms of my role as a woman in the law, I think, you know I feel proud to be a female lawyer. I guess, I think the more women there can be in these sort-of male fields is good and there can be good role models for girls growing up, and other than that I just want to be a good professional, regardless of gender.” This idea of being a role model for girls and young female attorneys was also prevalent in several other interviews: “Well, I think that I have a bunch of different roles, and one, you know we have law clerks that we hire right out of law school that will work for us for a couple of years, and I really like to give them a role model of a woman who can pick a profession they love, work hard at it, do it well and have a family; and I always tell the law clerks that are starting families, you know, you may not be able to do everything perfectly and that is just fine.”

Participants also suggested ways in which their roles should help other women, albeit in two distinct ways. One experienced attorney felt that her experience could serve an advisory capacity: “I think that women really need to think about what it is they’re getting into. I think that women need to know that if they make choices, especially choices about family that those choices are going to be looked down upon. If it makes you content to work like those men who are working 80 hours a week, power to them. But you won’t make as much money. We’re the only ones that know (what’s good for us).” More often, women suggested that their role in the legal system included utilizing their legal expertise to help other women, lawyers or otherwise: “But I do think women
have, you know, as women I think that there is a role to play, by virtue of being a woman. We have not been a very integrated profession for very long. We are still at our highest ranks very unbalanced and so I think that it's important to keep people focused on that and not be sort of idle about it. I hope to be able to continue to play roles that include being a woman, working with other women and working on behalf of women's issues.”

This final quote represents a general sentiment that despite the progression of women in the legal field, there is more work to be done. Several of the lawyers interviewed are hoping to find success and satisfaction in doing this work.
CHAPTER IX

CONCLUSIONS

This study was formed with the central aim of examining discrimination and harassment experiences of women in the legal field. The purpose was to evince responses beyond a simple “yes” or “no” answer to the question: “Have you ever personally experienced discrimination?” As evidenced by the findings, a “no” response to that question does not always actually mean “no”. Additionally, it was important to speak with these women about many different aspects of their careers in order to provide a framework for interpreting how and why participants labeled their experiences as discrimination, harassment or neither. What was uncovered in this investigation was that many women experience discrimination and harassment, but few readily label it as such. This chapter summarizes the main findings of this research and the implications for policy around gender discrimination, and then addresses limitations of the current study and possible future research directions.

Women reported wanting to be lawyers for many different reasons, such as a general interest in the law and/or politics, the academic aspects of legal study and a desire to create change in society. The vast majority of participants also deemed their law school experiences fairly egalitarian, and several even felt as if women were very quickly becoming the top students. Those who felt that there was still some inequality remaining, however, believed that there was preferential treatment given to men in prestigious law
school activities such as moot court and law review. One participant in particular felt that the emphasis on “overt competition”, a masculine tradition, necessarily put women at a disadvantage, and that law schools ought to focus on the many different ways that disputes may be resolved. Overall, however, women felt that they were treated equally and given the same opportunities as their male peers throughout their legal education.

The expectations of the women employed as lawyers were often described as being unmet or having to be altered. Many students believed that their careers would, at some point, come into conflict with their desire to have a family; practicing lawyers described ways in which such decisions affected their ability to balance work and caregiver roles. This emphasis on pregnancy and work/life balance played a significant role in the majority of the discussions concerning discrimination in the workplace. Overall, the women conveyed a general belief that pregnancy affected their status in the workplace, mainly because of an inability to balance family life and a career. In agreement with the literature (i.e., Hunter, 2005), the participants acknowledged that there were stereotypes that assumed that women were responsible for being the primary caregivers of their families and this created the reality of the “Mommy Track”.

The participants felt that this put women in a difficult position in terms of promotion possibilities (and therefore pay) because a woman could not simply start back in the same place she had been when she left her career to have children. They also believed that this has an effect on their ability to network and break through the barriers of the “Old Boys’ Club.” The fact that most participants readily accepted the idea of this “club” indicates that, at least to some degree, they still believe that there is a tendency for men to network with (and consequently promote) other men, an occurrence in line with
homosocial reproduction theory (Gorman, 2006; Kanter, 1977). All of these obstacles both contribute to and are exacerbated by discrimination and gender bias within the legal field, and the women lawyers and law students provided interesting personal perspectives on how this can and does affect their professional lives.

The general statistics indicate that women are still not equal to men in terms of pay and status in the workforce, especially in the legal field (Bureau of Labor Statistics, 2009; NALP, 2009). More than half of the women interviewed believed that promotion was still a challenge for female lawyers. This was evidenced by the very real existence of the “Mommy Track”, a term describing the process by which women get pushed into non-partner track conciliatory positions of lesser authority in firms as a direct result of their status as mothers (or mothers-to-be). Women also described “pink ghettos” or legal specializations (i.e., family or non-profit law, legal writing) that are not considered as prestigious (as criminal law, for example) and not paid as lucratively because they are considered “women’s work”. Women may be simultaneously pushed toward them and drawn into these areas because they include many more women than other legal specialties, and therefore can be better work environments for women in general.

Participants outlined several reasons that women are not able to achieve partnership in the legal field as related to pregnancy. These especially included a lack of networking opportunities and an inability to manage caregiver responsibilities while trying to “juggle” careers. Many of the interviews had themes that coincided with Ambivalent Sexism Theory (Glick & Fiske, 1996, 1999, 2001a, 2001b). Participants described experiencing (or knowing others who had experienced) primarily benevolent sexism related to stereotypes about women and their ability to work as effective lawyers,
especially as partners of law firms. They also often felt that the unwillingness of older men to foster working relationships with younger female attorneys created difficulty for women in terms of lacking connections with mentors within their firms who could help them negotiate the legal field. Additionally, many women felt that there were simply not enough female mentors from which to choose. This was also due in part to women treating other women badly, especially female support staff within offices, who often favored men and made women attorneys’ jobs that much more difficult.

Although several participants explicitly described instances of workplace bullying and many others referenced it in general terms, none reported taking action against it. It may be that the lack of familiarity with the “technical” definition of workplace bullying that keeps women from readily identifying such behavior, as researchers have asserted that organizational definitions of workplace bullying often do not match individual definitions or experiences, and targets are less likely to report if they do not see their case as legitimate or something that will be taken seriously (Saunders, Huynh & Goodman-Delahunty, 2007). Improvement of workplace policies around this issue would do well to foster a level of understanding for all employees. Lewis (2006) found that the more informed participants were about workplace bullying, the more likely they were to recognize their experiences as such. Participants also shifted from self-blame (which was a common occurrence during the interviews of this study) to pointing to difficulties in others and within the organization.

Another area that women felt contributed to their differential treatment as lawyers stemmed from media portrayals of the profession. Many participants believed that these portrayals were inaccurate, mainly because they objectified and stereotyped female
lawyers. Additionally, they believed that these characterizations had effects on society’s perception of them, which shaped expectations around how they should present themselves in court. The participants felt frustrated that there were appearance standards that put much more emphasis on attractiveness for women than men and demanded more time from women than that required of men. It was also common for participants to express dismay that female lawyers on television were often portrayed as overly aggressive. They felt that this was unrealistic, and several mentioned that acting in that way would cause one to be labeled “the bitch”. This is in line with previous research (i.e., Brescoll & Uhlmann, 2008) that indicates that women who violate traditional feminine stereotypes by acting aggressively are perceived negatively, even when their behavior is the same as a man’s behavior.

Many of the largest differences between practicing attorneys and law students were evinced in the conversations around appearance. Students in general stressed much more importance around physical appearance than practicing lawyers, although the two youngest lawyers shared beliefs more similar to the students on this subject. Students, however, were much more likely to accept objectifying expectations as the rule. Many female law students believed that women lawyers should always be in skirts as opposed to pantsuits, should wear more makeup and should always be “put together.” Practicing lawyers, in contrast, felt that the most important appearance factor was appearing professional, which could be achieved simply by wearing a suit. They acknowledged that, depending on the judge, they may consider a skirt, but they were certainly not the rule for women lawyers.
While all participants described some experience with unwanted commentary about their appearance and how that affects perceptions of them, several students described altering their appearance in ways that they believed would allow others to take them more seriously. This can be attributed to the level of importance the students placed on personal appearance and the consequences for their career. Practicing attorneys, on the other hand, felt that others attempted to make them believe that was the case, but their experiences told them that this simply was not true. The most reasonable cause for this divide among participants is age and experience within the field. Generationally, there are differences not only in media exposure but also in the amount of credence given to the portrayals there. Experientially, it may be that the lawyers believed the same thing as they started their careers but learned differently as their careers developed.

All of the topics described thus far create the substructure for the discussion around discrimination and/or sexual harassment experienced by women in the legal field. Participants, with one exception, believed that discrimination was something still experienced by women lawyers. The majority reported not experiencing it personally, but had read information leading them to believe it existed, especially in private practice and within larger firms. Many women also described a shift in discrimination, where it was no longer manifest in overt hiring practices barring women from the profession, but rather more subtle, difficult to clearly define harassment situations. Researchers have also acknowledged this shift to increased subtlety (i.e., Baretto, Ellemers, Cihangir & Stroebe, 2009), and have also elicited that this will make women less likely to take action against it because it is harder to identify (Baretto & Ellemers, 2005; Reichman and Sterling, 2004). The participants also felt that the expectations for career success unfairly
put women in a difficult position. On one hand, they are the traditional caregivers in society. On the other hand, the legal field remains largely unwilling to accommodate women’s dual-roles as professionals and mothers.

One particularly interesting discussion was concerning the inability to conclude if women were not being “allowed” to rise through the ranks of firms, or if they were “choosing” not to because of an inclination to avoid the lifestyle and/or maintain their status as primary caregivers. It seems a moot point of contention, however, as it can hardly be considered a “choice” when the other option was never really a viable one. How can the male-dominated hierarchy of legal culture place expectations on female attorneys that are not also placed on male attorneys? Since it remains a biological verity that men are unable to carry children, holding women responsible for this in ways that keep them from attaining leadership positions within the legal field is very much the definition of discrimination. Research has shown that, over the years, discrimination claims have followed this shift in unfair treatment. In general, such claims regarding hiring practices have declined, while those related to promotion have risen (Myerson, 1997).

Over two-thirds of participants had experienced at least sexual harassment during their time as interns or lawyers, though only a small number acknowledged their experience as such. About half of the time, these women considered that it may have been harassment or discrimination, but determined that they could not prove it. This determination, which has obvious importance to lawyers, has decisive implications. First, it points to the difficulty that individuals face in pursuing legal recourse in the face of discriminatory treatment. It also adds plausibility to the assertion that discrimination
has become increasingly subtle. It seems to be that the message is: “we can’t keep you
from becoming a lawyer, but we can make your time here miserable by sexually
harassing and bullying you until you ‘choose’ to pursue other options”. Finally, it
contributes to the unwillingness to take action against such treatment, as claims are
unlikely to be addressed or even taken seriously.

Indeed, none of the students and only the two most experienced lawyers reported
even verbalizing dissent concerning the treatment they experienced. No participants had
ever taken formal disputative action. In addition to barriers at each of the levels of
forming a dispute (naming, blaming and claiming; Felstiner, Abel & Sarat, 1980-1981),
lawyers felt that many instances of discrimination and/or harassment would be difficult to
prove in court. Indeed, a review of cases has indicated that Federal courts are not
favorable environments for employment discrimination plaintiffs; overall fewer cases,
plaintiffs see less success in terms of winning cases or appeals, whether upholding
decisions for the plaintiff or overturning those against (Clermont and Schwab, 2009).

The reluctance to label poor treatment as discriminatory was especially true in
cases of sexual harassment. Students often spoke about discrimination as something that
women themselves were responsible for managing. This speaks to the point of one
lawyer, who felt that she needed to “diffuse” the situation (of sexual harassment) before it
got to the point where a confrontation was necessary. In contrast to the students’
viewpoint, however, she felt that it was necessary to attribute the inappropriateness of the
comments to the man making them, or else she would internalize the situation and it
would become a “problem with her”. Although she never explicitly made claims of
harassment at work, she was one of the only women who expressed that it was absolutely the perpetrator of the harassment’s shortcomings that were responsible for the situation.

Overall, the women in the study felt that discrimination was not pleasant to have to deal with, but a reality nonetheless. Interestingly, the word “reality” (in reference to discrimination and especially harassment) was used in approximately 60% of all interviews, with 80% of the students feeling that this was the case. The fact that so many women felt this way, and yet so few were willing to take action against it, was discouraging but not surprising. In fact, substantial research has indicated that women lawyers are often willing to utilize reporting mechanisms because they do not trust them and consequently internalize and self-blame because of harassment (Cortina, Lonsley, Magway, Freeman, Collinsworth, Hunter & Fitzgerald, 2002). The general attitude seemed to be that if treatment was not labeled as harassing or discriminatory, one still had a choice of whether or not to let it affect oneself. This is particularly disconcerting, as failure to acknowledge and discourage such behavior may have the effect of legitimizing it, which ultimately serves to exacerbate the problem rather than eliminate it. The idea that women feel that they can simply “shrug off” discrimination and harassment does nothing to help other women who are unable or unwilling to do so, and so perpetuates the cycle of women’s relegated status compared to men. In addition, researchers have indicated that sexist attitudes and behaviors can have an effect on targets even if the targets do not acknowledge them (Kray, Thomson & Galinsky, 2001).

This factor was especially salient concerning sexual harassment and thus warrants special attention. There were many ways that women described dealing with (or more accurately, not dealing with) harassment, including ignoring it, minimizing it and
internalizing the blame for it. Although these tactics seem counterproductive, many lawyers expressed a very real fear that speaking out against harassment could have serious consequences for their clients, as the perpetrators of such behavior were often prosecutors and judges. Because these men hold positions of considerable power they can simply refuse to negotiate deals with particular lawyers. As a result, women lawyers who attempt to sanction the behavior of these powerful men can be rendered relatively ineffective in terms of their reputations as successful lawyers. They can be kept from drawing business and hence being successful within their firms. Thus many women choose to alter their perceptions of the discriminatory treatment, often citing that it was “unintentional”. Regardless of intention, however, the behavior is very real, and the legal system has an obligation to put an end to it. Considering the emphasis put on “professionalism” within the field, there is no room for or exception to this behavior.

So what can be done about discrimination and sexual harassment in the legal workplace? First, more reporting mechanisms need to be put into place, so that women feel that their claims can be taken seriously and quickly remedied. The stigma attached to labeling such treatment needs to be lifted, so that women feel empowered to speak out against the subtleties of discrimination. There is no longer space for the “learning curve” that seems to be in place regarding men’s ability to differentiate between their actions as “flattering” and “kind” (or benevolently sexist) versus debilitating. Men should, at this point, know that it is never appropriate to touch a coworker or make sexual commentary. It would be ideal to have a system in place that superseded firm authority in this regard, as those in power have shown a relative unwillingness to openly address the issue. The
legal system has shown that similar to other organizations, it is incapable of investigating itself.

Concerning promotion practices, several women pointed to areas of potential for improvement. Alternate partner tracks and compensation models, as well as job-share opportunities have proven effective in various firms. These models allow for women simultaneously to embrace childbearing roles and to offer their unique leadership contributions to the workplace. In general, a shift away from the emphasis on billable hours in the legal field is necessary. There is some anecdotal evidence (provided by the participants) to suggest that this is becoming the norm in some firms, where both men and women have decided that legal work does not necessitate “rat-race” culture. Other suggestions of many participants emphasized the need for childcare, including on-site daycare or benefits to cover costs. Women felt these recommendations would allow more time to focus on their careers.

This study faces several limitations, primarily due to the face-to-face aspect of the interviews. This could potentially keep women from fully disclosing experiences with discrimination, as they described legitimate fears of the consequences of speaking out against discrimination. Conversely, there is always the potential for a social desirability bias to affect participants’ responses because the interview was specifically about discrimination against women. Participants may have felt some degree of pressure to provide evidence in support of the views inherent in the questions. During the interviews, however, every effort was made to assure the participants that the aim was not to assert that there was or was not discrimination, but rather to examine the experiences of contemporary women in the field regardless of whether those experiences included
exposure to discrimination. The fact that many women were able to voice that they had not actually experienced what they would label as discrimination speaks to this effort.

The racial composition of the sample was almost entirely Caucasian, which not only limits generalizability but also neglects a very large demographic of traditionally underrepresented and disadvantaged persons. Finally, the use of a snowball sampling method may have produced a sample that was not especially diverse or generalizable to women in the legal field as a whole, although the numbers within the sample do fit the percentages of women in particular fields of legal specialization in general (i.e., approximately 18% of the sample included firm partners or judges, comparable to the 19% of women partners in legal firms in the United States; NALP, 2009).

Future research would benefit from recruiting much larger samples of women lawyers to discuss qualitatively their experiences with discrimination and harassment. Additionally, quantitative measures and control variables might be utilized to better understand the positions that women take with respect to discrimination within their field. Obtaining a more random sample of women lawyers will also increase the generalizability of findings as a whole. It would be interesting to conduct comparisons of larger samples of female attorneys with respect to urban versus rural settings, as well as private practice versus the public sector. A direct examination of workplace policies around sexual harassment and discrimination has the potential to allow for a critical evaluation of the avenues available to women to combat poor treatment. More in-depth discussion around women’s interpretations of why they or their colleagues may be hesitant to label discrimination would also provide evidence to develop more effective intervention mechanisms for women, which could be applied to women’s work
environments in general. It would also be intriguing to discuss discrimination and harassment with male attorneys, both concerning their own experiences and their perception of the experiences of women. Lastly, examining the workplace experiences of minority women would provide added insight into the possible effects of race/ethnicity on gender bias, especially whether one is experienced more than the other, differences in the effects that people experience due to the discrimination and how the types of discrimination interact.
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STUDENT INTERVIEW GUIDE

Questions labeled alphabetically are lead questions; others are follow-up questions that may or may not be included depending upon the response of the participant.

a. Please describe your academic and/or training background.
b. Please describe what drew you to your field of interest.
c. What is your personal opinion about the idea that discrimination against women exists in your field?
d. Please describe your academic/training experience thus far in terms of equality between female and male students/recruits.
   i. Are there differences?
      1. If so, what are they?
      2. Why do you think these differences exist?
e. Please describe the expectations you have for your future in your field.
   i. Are there individuals in your education/training that encourage or disparage these expectations?
      1. If so, why and how?
   ii. Do you feel that there are different expectations among the differing sexes?
      1. If so, please describe.
f. Please describe any experiences you have had applying for internship (etc) as a student/recruit.
   i. Did these experiences differ from that of your male peers?
      1. If so, how?
      2. Why do you think this is the case?
g. Please describe any experiences you have had applying for a job in your field.
   i. Did these experiences differ from that of your male peers?
      1. If so, how?
      2. Why do you think this is the case?
h. Do you think there is any discrimination against women in your field?
   i. If so, in what ways do you feel this discrimination manifests?
   ii. Are there some areas that you feel have improved?
   iii. Have you ever personally experienced discrimination?
      1. If so, please describe.
   iv. Do you know of any other female peers that have experienced discrimination in this field?
      1. If so, please describe
   v. Are there some areas that you feel have worsened?
   vi. In what ways do you feel that some of these issues may be addressed?
i. Do you feel that the media portrayals of your profession are accurate?
   i. If not, what are some examples of way in which this is not the case?
   ii. In what ways do you feel that these portrayals could become more realistic?
   iii. Do you believe that these portrayals have an effect on the way in which you are perceived?
      1. By co-workers
      2. By clients
j. Do you feel that your appearance affects the manner in which you are perceived by co-workers?
   i. If so, how?
   ii. What are your feelings about this?
k. Do you feel that your appearance affects the manner in which clients perceive you?
   i. If so, how?
   ii. What are your feelings about this?
l. Do you ever feel as if you’ve chosen the wrong field?
   i. If so, why?
m. Please give a summative statement about your perception of your role as a woman in your respective field.
PROFESSIONAL INTERVIEW GUIDE

Questions labeled alphabetically are lead questions; others are follow-up questions that may or may not be included depending upon the response of the participant.

a. Please describe your academic and/or training background.
b. Please describe what drew you to your respective field.
c. What is your personal opinion about the idea that discrimination against women exists in your field?
d. Please describe your academic/training experience.
   i. Did you notice any differences in terms of equality between female and male students/recruits?
      1. If so, what are they?
      2. Why do you think these differences exist?
e. Please describe the expectations you had upon entering your field.
   ii. Are there individuals in your education/training that encouraged or disparaged these expectations?
      1. If so, why and how?
f. Please describe any experiences you have had applying for internship (etc) as a student/recruit.
g. Please describe any experiences you have had applying for a job in your field?
   iii. Did these experiences differ from that of your male peers?
      1. If so, how?
      2. Why do you think this is the case?
h. Do you think there is any discrimination against women in your field?
   iv. Have you ever personally experienced discrimination?
      1. If so, please describe.
   v. Do you know of any other female peers that have experienced discrimination in this field?
      1. If so, please describe
   vi. If so, in what ways do you feel this discrimination manifests?
   vii. Are there some areas that you feel have improved?
   viii. Are there some areas that you feel have worsened?
   ix. In what ways do you feel that some of these issues may be addressed?
i. Do you feel that there are any discrepancies between men and women concerning advancement in your field?
   x. If so, please describe.
   xi. Why do you think such discrepancies exist?
   xii. How do you feel these discrepancies could be eliminated?
j. Do you feel that there are any discrepancies between men and women concerning pay in your field?
   xiii. If so, please describe.
   xiv. Why do you think such discrepancies exist?
   xv. How do you feel these discrepancies could be eliminated?

k. What, if any, do you believe are barriers preventing equality between men and women in your field?
   xvi. Why do you think these barriers exist?
   xvii. What are potential solutions to these barriers?

l. Do you feel that the media portrayals of your profession are accurate?
   xviii. If not, what are some examples of way in which this is not the case?
   xix. In what ways do you feel that these portrayals could become more realistic?
   xx. Do you believe that these portrayals have an effect on the way in which you are perceived?
      1. By co-workers
      2. By clients

m. Do you feel that your appearance affects the manner in which you are perceived by co-workers?
   xxii. If so, how?
   xxii. What are your feelings about this?

n. Do you feel that your appearance affects the manner in which clients perceive you?
   xxiii. If so, how?
   xxiv. What are your feelings about this?

o. Have you ever been instructed about what clothing to wear/not wear?
   a. How was the subject approached?
   b. Any repercussions for failure to comply?

p. Have you ever been instructed about what makeup to wear/not wear?
   a. How was the subject approached?
   b. Any repercussions for failure to comply?

q. Do you ever feel as if you've chosen the wrong field?
   xxv. If so, why?

r. Please give a summative statement about your perception of your role as a woman in your respective field.
Purpose: The purpose of this research is to investigate women's attitudes and experiences as members of law enforcement, lawyers, judges or students/trainees in these fields. It should take you between 20 and 30 minutes to complete this survey, after which an hour-long interview will be conducted.

Description: I will be assessing your attitudes and experiences as a woman in a traditionally male-dominated justice field, as well as some attitudes and perceptions about yourself. Your participation in this survey will remain completely anonymous.

PLEASE READ THE FOLLOWING STATEMENTS AND RESPOND AS TO WHETHER OR NOT YOU ARE WILLING TO PARTICIPATE:

1. I understand that the University of New Hampshire Institutional Review Board (IRB) has approved the use of human participants in this project, which among other duties, is there to protect human research participants.

2. I understand the scope, aims, and purposes of this research project, the procedures to be followed, and the expected length of my participation.

3. The IRB does not view this study as risk-free but as having no more than minimal risks. These risks are addressed by the researchers' plan to protect confidentiality.

4. I understand that the researcher plans to maintain confidentiality of all data and records associated with my participation in this research. Only the researcher and the academic advisor of the researcher will have access to the data, which will be kept in a locked location. I understand, however, that there are rare instances when the researcher may be required to share personally-identifiable information (e.g., according to policy, contract, regulation). For example, in response to a complaint about the research, officials at the University of New Hampshire, and/or regulatory and oversight government agencies may access research data.

5. I understand that my consent to participate in this research is entirely voluntary, and that my refusal to participate will involve no prejudice, penalty, or loss of benefits to which they would otherwise be entitled.

6. I further understand that if I consent to my participation, I may discontinue my participation at any time without prejudice, penalty, or loss of benefit to which I would otherwise be allowed.
7. I confirm that no coercion of any kind was used in seeking their participation in this research project.

8. I understand that if I have any questions about the research or any research related injury I can call Jessie French at 603-380-5856 or Dr. Ellen Cohn at 603-862-3197. In addition, if you have any questions about being a participant in this research project you can contact Julie Simpson (Office of Sponsored Research) at 603-862-2003.

9. I understand that I will not be provided financial incentive for my participation by the University of New Hampshire.

10. I have read and fully understand the purpose of this research project and its risks and benefits as stated above.

I, __________________ CONSENT/AGREE to participate in this research project

I, __________________ REFUSE/DO NOT AGREE to participate in this research project
University of New Hampshire

Research Integrity Services, Office of Sponsored Research
Service Building, 51 College Road, Durham, NH 03824-3585
Fax: 603-862-3564

30-Apr-2009

French, Jessie
Justice Studies, Huddleston Hall
31 Crown Point Drive
Dover, NH 03820

IRB #: 4576
Study: Women's Work Experiences in Traditionally Male-Dominated Justice Fields
Approval Date: 30-Apr-2009

The Institutional Review Board for the Protection of Human Subjects in Research (IRB) has reviewed and approved the protocol for your study as Expedited as described in Title 45, Code of Federal Regulations (CFR), Part 46, Subsection 110.

Approval is granted to conduct your study as described in your protocol for one year from the approval date above. At the end of the approval period, you will be asked to submit a report with regard to the involvement of human subjects in this study. If your study is still active, you may request an extension of IRB approval.

Researchers who conduct studies involving human subjects have responsibilities as outlined in the attached document, Responsibilities of Directors of Research Studies Involving Human Subjects. (This document is also available at http://www.unh.edu/osr/compliance/irb.html.) Please read this document carefully before commencing your work involving human subjects.

If you have questions or concerns about your study or this approval, please feel free to contact me at 603-862-2003 or Julie.simpson@unh.edu. Please refer to the IRB # above in all correspondence related to this study. The IRB wishes you success with your research.

For the IRB,

Julie F. Simpson
Manager

cc: File
    Cohn, Ellen