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Sabrina Collins  
*University of Louisville*

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# Commonwealth Review of Political Science

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## Perceptions of Discrimination in the Legal Profession

Author(s): Sabrina Collins, University of Louisville

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### Abstract

Historically, the legal profession has been dominated by white men (García-López 2008). Over time, the barriers hindering diverse participation have been somewhat lifted. In recent years, law schools enrolled equal percentages of men and women, and the number of minority students has also increased. So, how has the legal profession adapted to these changes? The hiring of women and minorities in the field of law does not reflect the increasing diversity seen in law school. Today, only 36% of lawyers are women. While existing research shows discrimination present in the field of law, few studies have examined the relationship between an attorney's practice area and experiences of discrimination. It is expected that masculine-typed areas of law create less inclusive work environments; therefore, I expect that women working in masculine-associated areas would report more gender discrimination as well as lower job satisfaction relative to attorneys in feminine-associated areas. Using an existing data set of practicing attorneys in North Carolina, we explored the degree to which reported levels of job satisfaction and perceived gender discrimination varied across gendered areas of law.

### Introduction

Historically, the legal profession has been dominated by white men (García-López 2008). In recent years, law schools have been enrolling men and women in equal proportions, and a growing number of minority students are graduating from law school (National Association for Law Placement 2015; Olson 2017); however, the growing diversity in law school is not mirrored in the field of law. As of 2017, only 36% of lawyers were women and racial minorities made up less than 10% of the American Bar Association (National Association for

Law Placement 2017). The percentage of women and minorities represented in the upper ranks of the field is even smaller, as there is little diversity among law partners (National Association of Law Placement 2017).

In this paper, I aim to analyze how experiences of attorneys differ across gendered areas of law. This paper will first discuss the struggles that women face in the legal profession. Understanding the way that out-group identities function within gender-associated workplaces allows for an understanding of how gender identities affect reported job satisfaction and per-

ceptions of workplace discrimination.

### **Women in the Legal Profession**

The lack of representation in the field of law leads to unique problems faced by marginalized groups. There is a wealth of research regarding women's experiences in employment, particularly in the field of law. The literature focuses on systematic barriers preventing equality in the field and the tangible ways in which this workplace discrimination is demonstrated. While women in law have made great strides in recent years, they still struggle with issues regarding discrimination in the field, balancing work and family, and pressures to perform gender in the workplace. Such struggles make it difficult for women in the legal profession to achieve the same status and respect as their male coworkers.

#### *Systematic Barriers in the Legal Profession*

Although work is being done to narrow the gender pay gap in the legal profession, wage disparity in the field is still a pressing issue (Rikleen 2013). Research suggests that women and men earn the same amount at the beginning of their career; however, in later years, women earn much less than their male counterparts, although the exact pay disparity is debated (Noonan, Corcoran, and Courant 2005; Reichman and Sterling 2013). While there is question as to why, exactly, the wage gap exists in the field, there is little question that the gap exists and reflects

systematic hindrances to women's success. One explanation for this phenomenon is that it is harder for women in law to move up into male-dominated positions which make more money (Kay, Alaire, and Jones 2016; Hagan, et al. 1991; Spurr 1990; but also see Hultin 2003). For instance, in 2007, only a fifth of partners were women, while women made up a little under half of associates at law firms (National Association for Law Placement, 2017). Many women are leaving the field before they can become partners because pressures to balance work and family are not alleviated by benefits, such as paid family leave (Kay, Alaire, and Jones 2016).

#### *Performing Gender in the Workplace*

Because men disproportionately populate the upper ranks of the legal system (e.g., partners, judges), there may be a pressure on individuals working in the field of law to present their gender in a more masculine way. Some women in the field choose to abide by such constraints to avoid professional consequences, while a smaller portion of female lawyers attempt to buck the system (Tomlinson et al. 2012). In the article "What It Takes to Be a Trial Lawyer If You're Not a Man", Laura Bazelon describes the struggles that many women face to be taken seriously in the masculine legal profession. Many women in law perform their gender by keeping their hair "not too long," but "not too short," and wearing clothes deemed "appropriate" by

those in power (i.e., men). Women must also be conscious of how they present themselves in the courtroom. Female lawyers have to find a balance between being “too hard” and “too soft”, so that they are not deemed as overly emotional by judges and fellow attorneys (Bazelon 2018; Rhode 2011).

### *Work and Family*

A major factor which impacts the retention of women in the legal profession is the struggle to balance work and family. The field of law is particularly unsupportive of women with families, which causes many women to leave the field entirely (Cooney and Uhlenberg 1989). This issue is exacerbated by practices such as the billable hour and the lack of paid family leave. In particular, the billable hour has become an issue which hinders women in the field. Many professional women still feel a pressure to be the primary homemaker while balancing a successful career. To balance work and family, female lawyers spend extra time outside of work hours attending to the physical needs of their children, whereas male lawyers tend to spend leisure time with their children (DeGusti, 2008). Since the more time-intensive physical care is typically allocated to mothers, male lawyers can contribute more billable hours at work. Billable hours generate revenue for firms, making this kind of “masculine” work highly valued, which disadvantages mothers who work in the law profession (Kay, Alaire, and Adjei 2016).

While women are typically tasked with taking care of the kids, men are expected to work longer hours in order to provide for their families. Excessive “work ethic” is just one way that masculinity is performed in the legal profession. Men are awarded status for spending long nights at the office and never making it home to their families. Despite these workplace norms, some men in the legal profession choose to make family time a priority. When men opt out of the hypermasculine “breadwinner” model, their masculinity tends to be questioned in the workplace. Similarly, to women with children, these male lawyers tend to be overlooked and are assumed to take work less seriously than their “masculine” coworkers (McGinley 2013).

Although both men and women are impacted by workplace norms surrounding work and family, these struggles more frequently result in female attrition from the field of law. Women ultimately leave the legal profession when it becomes clear that their prospects for advancement are quite different than female attorneys without families or male attorneys with children (Kay, Alaire, and Adjei 2013).

### **Occupational Segregation**

Occupational segregation exists within different fields and workplaces to separate the kinds of work deemed fit for men and women. In general, men are seen as more hierarchical and are more likely to work in positions that are associated with leadership and

power (Diekman, Goodfriend, and Goodwin 2004; Haire and Moyer 2015). In the field of law, men are more likely to work in private practice, become a partner, work for smaller firms, and engage in solo practice; meanwhile, women are more likely to stay in the lower ranks of the field and work in the public sector (Hagan et al. 1991; Haire and Moyer 2015; Merritt 2015; National Association for Law Placement 2017). The composition of the law profession has changed since the recession in 2008. In the early 2000s, the disparities between men and women in the field of law were beginning to narrow, with more women graduating from law school and finding a place in the field; however, when the economy started to turn, prospects for law school graduates began to plummet. Women's careers were hit harder than men's, as more men moved to smaller firms and solo practice (Merritt 2015). The changes seen after the recession are still reflected in the law profession today and impact lawyers' experiences finding a place in the field.

### **Job Satisfaction and Perceptions of Discrimination**

A smaller body of research exists on job satisfaction in the field of law. It seems likely that job satisfaction varies based on the kind of law that an individual practices (public vs. private law). Since public and privatized law are gendered arenas, one might expect that job satisfaction is a gendered idea; however, little research supports this hypothesis. In

general, most research shows no job satisfaction discrepancy on the basis of gender or minority status (Dau Schmidt and Mukhopadhaya 1999; Dinovitzer and Garth 2007; Hagan and Kay 2007). Meanwhile, studies show that female lawyers are more likely to report feelings of depression relative to men (Hagan and Kay 2007).

Similarly, perceptions of discrimination tend to differ among survey respondents. A great deal of research on earnings and promotion in the field of law exist. These factors are indicative of differential treatment towards certain groups in the law profession; however, reported perceptions of discrimination within the field differ. Research shows that women and minorities in the field of law are more likely to perceive discrimination in the workplace (Collins, Dumas, and Moyer 2017; Hirsh and Lyons 2010). Furthermore, individuals who began their careers during a time of great discrimination are likely to be more perceptive to discrimination (Haire and Moyer 2015). A 2017 study by Collins, Dumas, and Moyer examines survey data for trends regarding perceptions of discrimination. In this paper, race, gender, and age are analyzed as independent variables which influence perceptions of discrimination and overall job satisfaction. Ultimately, this study finds that women and minorities are more likely to perceive discrimination in the workplace and that women of color, in particular, are more likely to report lower levels of job satisfaction (Collins, Dumas, and Moyer 2017).

Even though job satisfaction, wage gap, and retention data tell a story about the experiences of women and minorities in the field of law, survey responses might not always reflect what is known about conditions in the field of law. One explanation for this phenomenon is the System Justification Theory. System Justification Theory suggests that individuals who face discrimination are likely to report low levels of discrimination when asked. This is because they have internalized their oppression and justify their experiences as part of the “status quo” (Blasi and Jost 2012). System Justification Theory explains that, while conditions are clearly different for women and minorities in the law profession, survey respondents might still report high levels of job satisfaction and low perceptions of workplace discrimination.

### **Implications of Practice Area on Experiences**

In the field of law, men and women tend to work in separate spheres. These variables are operationalized in two ways (See Table 1). First, I categorize the type of legal practice that respondents identified as their workplace and label these as masculine-typed, feminine-typed, neutral, or other. In response to the question, “Which one below best describes your practice?” attorneys could choose from the following categories: solo private practitioner, small private firm (2 to 5 attorneys), medium private firm (6-19 attorneys), large private firm (20 or more attorneys), in-house counsel for a private business or corporation, in-

house counsel for a nonprofit organization, government attorney, legal aid attorney, not actively practicing, and other.

From the literature, it is clear that men are more likely to engage in solo practice while women are more likely to work in larger firms. For this reason, work in smaller firms is classified as masculine-typed while work in larger firms is classified as feminine-typed.

Furthermore, women are more likely to do work that facilitates the operations of more prestigious, masculine work. Because of this, practice types (such as legal aid) are categorized as feminine-associated work.

A second way that gendered framework could be conceptualized is through the amount of litigation associated with the type of law practiced. In this study, masculine associations are paired with more litigation-based practice, feminine associations less focused on litigation. In the survey, respondents were asked to estimate the percentage of their work that is based on litigation. While qualitative coding of practice areas provides a more general view of attorneys’ experiences in particular fields of law, quantitative coding allows for a more individualized analysis.

My hypotheses focus on ways that gender identities contribute to experiences within gender-associated specializations of legal practice, leading to the following predictions:

The emphasis on hypermasculine norms in masculine fields of law will

shape the experiences of the “outgroup” in a negative way. I anticipate that masculine-associated practice areas will be organized in a more hierarchical sense and will foster less inclusive work environments. I expect that similar atmospheres are created among attorneys working primarily in litigation. I expect that these masculine-associated spheres will result in higher reports of discrimination among members of the outgroup:

**H<sub>1a</sub>:** Female attorneys will report more perceived discrimination when working in masculine associated practice areas.

**H<sub>1b</sub>:** Female attorneys will report more perceived discrimination when working in positions where more than half of their time is spent in litigation.

Is there a relationship between perceptions of discrimination and job satisfaction? From the literature, it is clear that perceptions of discrimination differ based on the identity of the respondent (Collins, Moyer, and Dumas 2017); meanwhile, there is debate as to whether there are meaningful gender or racial differences in career satisfaction. While most studies conclude that the difference among these groups is minimal (Dau-Schmidt and Mukhopadhyaya 1999; Dinovitzer and Garth 2007; Hagan and Kay 2007), previous studies have not analyzed career satisfaction as it differs based on legal specialization. I anticipate that once reported career satisfaction is categorized by gender-

associated spheres, nontrivial differences between respondent demographics will emerge.

**H<sub>2a</sub>:** Female attorneys will report lower job satisfaction than men when working in masculine associated practice areas.

**H<sub>2b</sub>:** Female attorneys will report lower job satisfaction than men when working in positions where more than half of their time is spent in litigation.

### **Data, Variables, and Methods**

To assess the impact of gender identity on workplace experiences in the legal profession, I use the results from an online survey of North Carolina attorneys conducted by Collins, Moyer, and Dumas in 2014. The survey was distributed to every licensed attorney (24,775 attorneys in total) from North Carolina via email using Qualtrics software. Ultimately, 2,744 usable survey responses were collected over the course of one month. Although limited in terms of the focus on a single state, the sample is comparable to both state and national estimates of the legal profession with respect to both demographics and practice types, lessening the concern of self-selection bias in the data set (Collins, Moyer, and Dumas 2017). The survey consisted of questions regarding practice-type and specialization, as well as information about respondent characteristics, including law school attended, years of practice, and how much of the re-



spondent’s practice involves litigation.

**Table 1: Practice Area**

Masculine-Typed	solo, small firm, in house-private
Feminine-Typed	large firm, in house- nonprofit, legal aid
Neutral	medium-sized firm , government
Other	other

The main independent variables in this study are gender and the amount of litigation a respondent engages in. I treat the gender-association of a respondent’s practice area as an independent variable to measure the impact on personal feelings about one’s career. Practice areas were coded as masculine-typed, feminine-typed, neutral, or other. This coding was done in two ways. The first categorization was done based on qualitative characteristics of legal practice that change based on the size of a law firm (See Table 1). Gender-associated coding was also quantitatively done on the basis of the estimated percentage of time spent in litigation. Percentage of time spent in litigation was recorded on a scale of 0 to 100. Responses from 0 to 50 are categorized as feminine-associated practice, while responses from 51-100

are categorized as masculine-associated practice. To determine the relationship between gender associated spheres of law and the two dependent variables (perceptions of discrimination and career satisfaction), I performed bivariate analysis by cross tabulations with chi squared.

**Table 2: Overall Reports of Gender Discrimination in Feminine Areas of Law.<sup>1</sup>**

	Non-feminine area	Feminine-area	Total
No gender discrimination	71.30% (1304)	77.12% (327)	72.39% (1631)
Gender discrimination	28.70% (525)	22.88% (97)	27.61% (622)
Total	100.00% (1829)	100.00% (424)	100.00% (2253)

**Results and Discussion**

Of the 2,254 survey responses collected, about two thirds of the respondents were male, while the remaining third identified themselves as female. Furthermore, 91 percent of survey respondents were white, 5 percent were African American, and less than 4 percent of respondents identified themselves as American Indian, Hispanic, or any other race. Additionally, around 32% of respondents said they spend half of their time at work or less in litigation. Approximately 68 percent of respon-

<sup>1</sup> Relationship is statistically significant (p = 0.016)

dents identified that they spend 51% or more of their time at work in litigation. A t-test was performed to determine the relationship between gender and reported percentage of litigation. Overall, women reported spending an average of 55% of their time in litigation while men reported spending 58% of their time in litigation. The difference in the amount of litigation reported by men and women was found to be statistically significant.

No gender discrimination	26.30% (101)	23.78% (88)	25.07% (189)
Gender discrimination	72.70% (283)	76.22% (282)	74.93% (565)
Total	100.00% (384)	100.00% (370)	100.00% (754)

Cross tabulations with chi squared calculations showed that there is not a statistically significant relationship between women’s reported gender or race discrimination and masculine associated practice areas. 76% of women working in masculine practice areas reported gender discrimination, compared to 72% of women working in non-masculine practice areas. Despite these differences in percentages, the relationship is not statistically significant; As a result, I cannot reject the null hypothesis for hypothesis 1a.<sup>2</sup>

Additionally, there was not a statistically significant relationship between amount of litigation (when categorized as 51% or more and 50% or less) and reports of gender and race discrimination, respectively. The null hypothesis for hypothesis 1b cannot be rejected.

**Table 3: Women’s Reported Gender Discrimination in Masculine Practice Areas<sup>3</sup>**

	Non-masculine area	Masculine-area	Total

**Table 4: Women’s Reports of Race Discrimination<sup>4</sup>**

	50% or less litigation	51% + litigation	Total
No race discrimination	85.76% (259)	89.91% (392)	88.21% (651)

<sup>2</sup> However, there is a statistically significant relationship between overall reports of gender discrimination and practice area gender associations. Overall reports of gender discrimination were lower in feminine practice areas (See Table 2).

<sup>3</sup> Relationship not statistically significant. Similar results found when analyzing women’s reported race discrimination in masculine practice areas.

<sup>4</sup> Relationship not statistically significant. Similar results found when analyzing women’s reported gender discrimination based on percentage of litigation.

Race discrimination	14.2 4% (43)	10.0 9% (44)	11.7 9% (87)
Total	100.00% (302)	100.00% (436)	100.00% (738)

Overall, there is a relationship seen between women’s reports of career satisfaction and masculine-areas of law. Women are more likely to report lower career satisfaction when working in masculine practice areas. 21 percent of women working in masculine practice areas of law reported low career satisfaction, compared to 14% in non-masculine practice areas. Additionally, 85% of women working in non-masculine practice areas reported high career satisfaction, compared to 78% of women who work in masculine practice areas. As a result, I reject my null hypothesis for hypothesis 2a.<sup>5</sup>

**Table 5: Women’s Reports of Career Satisfaction in Masculine Areas of Law<sup>6</sup>**

	Non-masculine area	Masculine-area	Total
Low Career Satisfaction	14.62% (57)	21.39% (80)	17.92% (137)
High Career Satisfaction	85.38% (333)	78.61% (294)	82.07% (627)
Total	100.00% (390)	100.00% (374)	100.00% (764)

Finally, the relationship between women’s reports of career satisfaction and amount of litigation is not statistically significant; therefore my hypothesis (2b) is rejected. This conclusion could be a result of the dichotomous way that the litigation variable was categorized.

**Table 7: Women’s Reports of Career Satisfaction<sup>7</sup>**

	50% or less litigation	51% + litigation	Total
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<sup>5</sup> In addition, there is a statistically significant relationship between overall reports of career satisfaction and feminine practice areas. Overall, respondents were more likely to report high career satisfaction when working in feminine areas of law than those who work in non-feminine areas. (See Table 6).

<sup>6</sup> Career satisfaction was assessed on a scale from 0-7. Responses of 0-3 were coded as “low career satisfaction” while responses of 4-7 were coded as “high career satisfaction”. Relationship statistically significant (p = 0.015).

<sup>7</sup>Relationship not statistically significant.

Low Career Satisfaction	20.32% (63)	16.30% (74)	17.92% (137)
High Career Satisfaction	79.68% (247)	83.70% (380)	82.07% (627)
Total	100.00% (310)	100.00% (454)	100.00% (764)

Further research will explore the degree to which career satisfaction and perceptions of discrimination differ on the basis of gendered specializations of law practice. Furthermore, my future research on this topic will account for age as an identity intersecting with race and gender to create unique experiences in the legal profession. Finally, additional work can focus on men's experiences in feminine practice areas and specializations of legal practice, as it relates to their perceptions of discrimination and reported career satisfaction.

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