

Indiana Law Review

Volume 8

1974

Number 2

Women Executives, Managers and Professionals in the Indiana Criminal Justice System

JULIA C. LAMBER*

VICTOR L. STREIB**

[T]he system of criminal justice must attract more people and better people—police, prosecutors, judges, defense attorneys, probation and parole officers, and corrections officials with more knowledge, expertise, initiative and integrity.¹

The experience of the Law Enforcement Assistance Administration has demonstrated that the full and equal participation of women and minority individuals in employment opportunities in the criminal justice system is a necessary component to the Safe Streets Act's program to reduce crime and delinquency in the United States.²

I. INTRODUCTION

Indiana's Criminal Justice System (ICJS) is in constant need of quality people as employees within its various agencies. The thesis of this Article is that the ICJS should select these quality people from a pool of candidates who are "people" and not just "white men." Women are seeking, and at times demanding,³ employment within criminal justice systems. To some de-

*Assistant Professor of Business Law, Indiana University. B.A., De Pauw University, 1969; J.D., Indiana University, 1972.

**Assistant Professor, Department of Forensic Studies, Indiana University. B.I.E., Auburn University, 1966; J.D., Indiana University, 1970.

¹PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY vi (1967).

²28 C.F.R. § 42.301(a) (1974).

³In August 1973 the United States Department of Justice filed a civil suit against the Chicago Police Department to enforce equal employment opportunity regulations. Chicago employs approximately 13,500 police officers,

gree they are being accommodated.⁴ The Police Foundation has backed a major study of policewomen on patrol,⁵ and women are entering law schools and the legal profession in significantly increasing numbers.⁶ However, rarely do women reach executive, professional, or managerial positions within the ICJS.⁷ In contrast, more and more women are moving into similar positions in business and industry.⁸

The basic question addressed by this Article is: Do statutory employment requirements, express or implied, discourage or preclude applications by women for or promotion of women to executive, professional, or managerial positions within the Indiana Criminal Justice System? The answer given is necessarily of limited scope. At this initial stage, only one category of factors affecting the entire Indiana Criminal Justice System is considered—Indiana's statutes and their implications as well as issues raised in sex discrimination cases. An examination of informal agency policies and other organizational considerations is left to a later study.

Although this Article is confined to the Indiana Criminal Justice System, that system is not unique and the problems discussed have implications for other criminal justice systems. Within the ICJS are included the state, county, city, and town agents and agencies designated to detect criminal offenses, to apprehend criminal offenders, to prosecute, defend, and adjudicate accused persons, and to "correct" those who are convicted of committing crimes. While this is designated as a singular system, it is recognized that the ICJS is more accurately viewed as a collagenuous assembly of town marshals, supreme court justices, state troopers, city judges, attorneys general, and private defense attorneys. As

of which 115 (0.85 percent) are women. See LEAA Newsletter, November 1973, at 24.

⁴Some agencies are actively seeking women for entry level criminal justice positions. See Pogrebin, *The Working Woman*, LADIES HOME JOURNAL, September 1973, at 36.

⁵P. BLOCH & D. ANDERSON, *POLICEWOMAN ON PATROL* (1974).

⁶The 1973 enrollment of women in law school is nine times the 1963 enrollment, 1,883 to 16,760. Women now comprise 15.6% of the total enrollment in approved law schools. Ruud, *That Burgeoning Law School Enrollment is Portia*, 60 A.B.A.J. 182 (1974).

⁷Reference to the Appendix will indicate the very few women in the ICJS. See also Ellett, *Monroe Has Only Female Deputy Prosecutor in State*, Bloomington-Bedford Sunday Herald-Times, Dec. 9, 1973, at 2, col. 1; Scutt, *Woman Wields Gavel in Superior Court*, Bloomington-Bedford Sunday Herald-Times, Nov. 26, 1972, at 22, col. 3.

⁸See generally Orth & Jacobs, *Women in Management: Pattern for Change*, 49 HARV. BUS. REV. 139 (July-Aug. 1971).

incongruous as such a collage may be, this "system" does have a singular concern—crime and society's public response to it.

To further narrow its scope to a manageable dimension, this Article focuses upon those federal and state laws affecting the ICJS positions of concern. Some of these laws explicitly exclude certain classes of persons; others impliedly include certain classes of persons; others are a combination of these approaches. In any event, this Article is concerned with the legal environment of these ICJS positions. Its conclusions are directed toward changes in the law or changes in practice to more closely comply with present laws. Moreover, the ICJS positions of interest here are professional, managerial, and executive positions. Generally, the authors have defined these positions as those requiring advanced training and education, involving mental rather than manual work, requiring primarily the control or direction of others, or involving the administration of a collection of several functions.⁹

Specifically, this study includes such Indiana law enforcement officials as town marshals, chiefs of police, sheriffs, the state police superintendent, and middle-management positions within larger law enforcement agencies. Also included are county prosecutors and their deputy prosecutors as well as the Indiana Attorney General and those members of his (no woman has ever held the post) staff who deal with criminal prosecutions. Public defenders and private attorneys who handle a significant number of criminal cases are covered as are judges with criminal jurisdiction, such as town, city, and county judges, judges of the court of appeals, and supreme court justices. In the corrections field the study encompasses state institution heads, state division heads and other middle-management positions, local jail supervisors, county probation officers with adult criminal probationers, and state parole officers with adult criminal parolees.

Those ICJS positions not mentioned above are excluded from this study but cannot be ignored. For example, if police chiefs are chosen from the law enforcement agency's lower ranks and agency entrance is possible only at the patrol officer level, then there will be no women police chiefs if there have been no women patrol officers. The study also excludes consideration of such positions as bailiffs, justices of the peace, and prison guards. The various juvenile justice positions are also not covered unless they incorporate criminal justice responsibilities as well.

The next section discusses the general phenomenon of women and employment in 1974. Following is an examination in detail of the specific statutory requirements for employment within the

⁹WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY OF THE ENGLISH LANGUAGE 1437, 1095, 639 (2d ed. unabridged 1967).

ICJS. The fourth section examines the discriminatory effect of these specific statutory requirements. The Article closes with a description of the authors' recommended ICJS affirmative action plan.

II. WOMEN AND EMPLOYMENT

Criminal justice systems, including the ICJS, are not very different from other institutions in terms of employment policies and practices pertaining to professionals, executives, and managers. Many of the same limitations, restraints, and roadblocks which have prevented women from being employed in or promoted to such positions in other institutions are found in the ICJS. Therefore, before turning to the ICJS material this section explores some general notions about women and employment. First, it examines the dimensions of women in employment, generally, and in professional positions. Secondly, it introduces the legal environment surrounding women in employment.

The problems of equal rights and employment opportunities for women are pervasive. In 1973, there were over 34.8 million women in the work force, comprising 38.5% of the total labor pool.¹⁰ Of these women, 18.5 million, representing 59%, were married and living with their husbands. There is a concentration of women in low-paying, dead-end jobs. As a result, the average woman worker earns about three-fifths of what a man earns,¹¹ and a fully employed woman high school graduate receives less income on the average than a fully employed man with less than eight years of schooling.

These figures must be understood in the context of the reasons why women work. Most women work because of economic need; two-thirds of all women workers are single, divorced, widowed, or separated, or have husbands who earn less than \$7,000 a year.¹² About one out of nine families is headed by a woman, and among poor families, almost two out of five. Approximately three out of ten black families are headed by a woman; the ratio in poor black families is almost three out of five. Other women

¹⁰Statistics mentioned in this section are from the Women's Bureau, Department of Labor.

¹¹In 1971 the median incomes for full-time, year-round work were: white men, \$9,373; minority men, \$6,598; white women, \$5,490; and minority women, \$4,674.

¹²The working wife's income frequently raises the family above the poverty level. In 1970 classified as poor were those non-farm families of four with total income of less than \$4,000. In husband-wife families, fourteen percent are poor if the wife does not work; four percent are poor if the wife does work.

work because of other, non-monetary needs, that is, for the same reasons many men work—psychological fulfillment, ego-gratification, and a desire to succeed. Moreover, not only are women working in increasing numbers but they have also begun to break out of traditionally female occupations.¹³

Women are moving into “executive suites” in increasing numbers. For example, women are being promoted to supervisory and managerial positions by manufacturing companies. Banks are moving women from teller positions to branch managers. Insurance companies have encouraged women to assume positions in sales.¹⁴ And there has been a small increase in the number of women with graduate degrees during the past decade.¹⁵ However, the percentage of women in particular fields has declined since the 1920’s. Today women constitute about one percent of all engineers, 3.5 percent of all lawyers, seven percent of all physicians, eight percent of all scientists, and nine percent of all full professors in the field of academics.¹⁶

Generally there exists a scarcity of information about women in the professions. What is available often is outdated and does not take into account the effects of recent legislative changes or of the revitalized women’s movement. The first congressional committee hearings concerning discrimination on the basis of sex, however, provided an opportunity to gather descriptive information and to make public the breadth, depth, and pervasiveness of sex discrimination in education, the labor market, the professions, government, and even in the law itself.¹⁷ By describing the status

¹³Steinem, *If We’re So Smart, Why Aren’t We Rich*, 1 Ms. 37, 127 (June 1973).

¹⁴Bralove, *Where the Boys Are*, Wall Street Journal, Apr. 18, 1974, at 1, col. 6.

¹⁵The number of women graduate and doctoral business students has increased from 3.1% to 5.5% of all such students in five years. Bralove, *supra* note 14. Law school enrollment of women in 1973 was nearly nine times the enrollment of women in 1963. Ruud, *supra* note 6. There has also been a similar increase in the number of women lawyers but as a percentage of all lawyers their number has only barely increased. DISCRIMINATION AGAINST WOMEN, CONGRESSIONAL HEARINGS ON EQUAL RIGHTS IN EDUCATION AND EMPLOYMENT 502 (C. Stimpson ed. 1973) (statement of attorney Margaret Laurance) [hereinafter cited as STIMPSON].

¹⁶STIMPSON, *supra* note 15, at 4 (comment by subcommittee chairperson Edith Green).

¹⁷*Id.* at ix, x (foreword by Edith Green). The special subcommittee hearings were based on a consideration of H.R. 16,098, 91st Cong. 2d Sess. § 805 (1970), directed at discrimination against women. The bill provided for four changes in equal opportunity laws:

- (1) amendment of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, to prohibit discrimination on the basis of sex in federally assisted programs;

of women in various professions we may better understand the professional women in the criminal justice system and incidentally dispel the "popular wisdom" that women are already powerful and "more equal."

Information available in 1970 showed that women constituted more than forty percent of all white collar workers. However, only one out of ten working women was in a management position and only one out of seven professional jobs was filled by a woman. The resulting gap in earnings was such that in 1968 only three percent of the women workers had incomes of at least \$10,000, whereas among men twenty-eight percent earned at least that much.¹⁸ Or to describe the situation in another way, ninety-four percent of all jobs which pay at least \$15,000 a year are held by white men; women and minority men hold the remaining six percent.¹⁹

One professional area studied was business. Given business' overall concern for productivity and profits one might anticipate that it would be far easier for a woman to be successful there if she were good. However, a recent survey of twenty top organizations²⁰ showed that not only do women face substantial barriers in their rise to the top, but the need to constantly caution firms to hire only "qualified" women belied the firms' commitment to individual worth. One never sees the caution "hire only qualified men." Of course, one would expect a firm to hire and promote on the basis of ability and qualifications; to assume it would not do so in regard to women employees or applicants is only one illustration of the fact that women are considered in a different way, in a different light, from men.

The survey of twenty prominent employers included ten industrial companies from among the top one hundred companies on the *Fortune* "500" list. Five of the ten surveyed were among the top twenty. The other ten organizations, such as diversified financial institutions and retailers, were on the *Fortune* "50

(2) removal of the educational institution exemption from Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e;

(3) removal of the exception of executive, administrative, and professional employees from the equal pay provisions of the Fair Labor Standards Act, 29 U.S.C. § 206(d); and

(4) authorization of the Civil Rights Commission to study discrimination against women.

Although this particular House bill was defeated in 1970, by 1972 the aims of section 805 had been realized. See text accompanying note 46 *infra*.

¹⁸STIMPSON, *supra* note 15, at 502-03 (statement of Margaret Laurance).

¹⁹Steinem, *supra* note 13, at 126.

²⁰Fretz & Hayman, *Progress for Women—Men Are Still More Equal*, 51 HARV. BUS. REV. 133, 134 (Sept.-Oct. 1973).

largest" list. In these twenty corporations, which employed approximately two million people, women represented thirty-six percent of the total work force. On the other hand, women officials, managers, and professionals accounted for less than one percent.²¹ Not only were attitudes of employers reflected in this study but also mirrored was the fact that men are still considered better risks for managerial training positions.²² Further, "equal pay for equal work," although always a stated policy, was rarely a practice.²³ The study concluded from all the available data that women professionals perform on an equal level with men professionals. However, it showed that bias against women still exists. For example, women were not judged as seriously as men, or the judgment of a woman's performance was affected by the negative attitudes of her colleagues. The authors listed three sources of negative reactions: other supervised women, men who feel threatened by a woman's advancement, and minority group employees who may fear being slighted or ignored because of the company's concern about women.²⁴ Because of the stereotyped attitudes of their colleagues, many women in management must tread carefully. On the one hand, a woman cannot show emotion for fear of being labeled temperamental and must remain low-keyed to halt subordinates' ideas that she is "shrill." On the other hand, if a woman manager is timid, hesitant or nervous, she has confirmed the female stereotype.²⁵ Employment under these contradictions and traps is a strain; most men are allowed a wider range of acceptable emotions and more personality variations are successfully tolerated.

Another profession studied was science and engineering. The National Research Council recently completed a survey of the nation's doctorate-level scientists and engineers,²⁶ detailing unemployment levels, salaries, and types of employment positions. For the 244,900 doctoral scientists and engineers, in 1973 the unemployment rate was 1.2 percent. Women, who constituted nine percent of the doctoral population, reported an unemployment of 3.9 percent while that of men was only 0.9 percent. The 1973 median annual salary was \$20,890; the highest median salary, \$22,490, was in engineering, the area with the lowest percentage of women. The women's median salary was \$17,620, \$3,500 less than that of

²¹*Id.*

²²*Id.* at 133.

²³*Id.* at 137.

²⁴*Id.* at 140.

²⁵Bralove, *supra* note 14.

²⁶The survey was sponsored by the National Academy of Sciences in 1973. A complete copy of the report is on file at the Office of Research and Advanced Studies, Indiana University, Bloomington, Indiana.

the men. Of the various employment positions, approximately sixty percent of the working population studied were employed by educational institutions; more than twenty percent held positions in business and industry. Over forty percent of those working were engaged in research and development and its administration; an additional thirty-eight percent were in teaching. Seventy-five percent of the women were concentrated in the areas of biosciences, psychology, and social sciences.

Because the woman doctoral scientist or engineer often fits also into the category of women doctorates as academicians, one should consider some of the attitudinal problems these women face in the context of academics. For example, a 1969 study of the woman doctorate by Helen Astin dealt in part with obstacles encountered in a professional woman's career development. In Astin's sample of 1460 women doctorates, nine out of ten were working, although over half were married and had families.²⁷ In fact, the problem of adequate and dependable help, housekeeper or babysitter, was considered the greatest obstacle encountered by these women. Unexplained salary differentials, tenure, and promotion policies, which included mandatory maternity leaves, and the usual subtle types of discrimination which prove harder to assess²⁸ were forms of perceived employer discrimination mentioned by the women surveyed.

Interestingly, the percentage of degrees earned by women has not continually grown since the turn of the century but in fact peaked during the 1930's and 1940's. At the bachelor degree level, women received nineteen percent of the degrees at the turn of the century, forty percent in the early 1960's and forty-three percent during the latter part of that decade. At the master's degree level, women accounted for nineteen percent of the degrees at the turn of the century, thirty-eight percent in 1940 and thirty-two percent in the early 1960's. At the doctorate degree level, women earned six percent in the early 1930's, thirteen percent in 1940 and eleven percent in the 1960's.²⁹ In 1969-1970, there were 29,866 doctoral degrees granted; women accounted for 3,976, or approximately thirteen percent.³⁰

Since graduate training is essential to an academic career, it is apparent that women in higher education have been losing

²⁷H. ASTIN, *THE WOMAN DOCTORATE IN AMERICA* (1969), *reprinted in* STIMPSON, *supra* note 15, at 449.

²⁸*Id.* at 451.

²⁹Rossi, *Discrimination and Demography Restrict Opportunities for Academic Women*, 48 *COLLEGE AND UNIVERSITY BUSINESS* 74 (Feb. 1970), *reprinted in* STIMPSON, *supra* note 15, at 455.

³⁰U.S. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, *DIGEST OF EDUCATIONAL STATISTICS* 90 (1971).

ground. In 1870, one-third of the faculty in the country's colleges and universities were women. Today women comprise only about one-fourth of the total. At prestigious universities in the "Big Ten," women hold ten percent or less of the faculty positions.³¹ For example, in 1973 at Indiana University, Bloomington, only one out of thirty-five distinguished professors was a woman. Thirty-three full professors, 38 associate professors, 64 assistant professors and 6 instructors were women out of totals of 555, 405, 405, and 29 respectively,³² making up a total of 143 women out of 1429 positions.

In defense of these statistics it is often alleged that there is a lack of qualified women who hold doctorates in certain areas. Defenders also point to the fact that a higher percentage of women doctorates go into college or university teaching than do similarly educated men.³³ But, while women earn 24% of the English doctoral degrees awarded nationally, 28% of the English degrees from the fifteen top schools, and 21% of the English degrees at Indiana University, women faculty members comprise only 8.3% of the total English faculty at Indiana University, Bloomington.³⁴ Similar proportions exist in other disciplines. Once hired, women faculty are not immune from the unequal pay for equal work problem. One author places a good deal of responsibility upon typical departmental chairmen who have difficulty distinguishing between women on their respective faculties and their own homemaker wives.³⁵ Also contributing to the problem are department chairmen who see nothing wrong with paying a woman less than a man if she is married because she does not need as much, or if she is not married, because she can get by on less.³⁶

Another professional area examined was medicine. Estimates by the Public Health Service indicate that by 1975 this country will need over 100,000 more physicians than are presently active.³⁷ Since fewer than 8,000 physicians were graduated in June, 1967, the problem in this profession is slightly different from the mar-

³¹STIMPSON, *supra* note 15, at 415 (statement of Dr. Bernice Sandler).

³²Figures from the Office of Institutional Research, Indiana University, Bloomington, Indiana. These totals exclude lecturers, visiting appointments, and other "academic" appointments such as counselors or research associates. In the fall of 1973 there were sixty-three tenured women faculty members.

³³STIMPSON, *supra* note 15, at 415 (statement of Dr. Bernice Sandler).

³⁴Figures from the Office of the Dean for Women's Affairs, Indiana University, Bloomington, Indiana.

³⁵Rossi, *supra* note 29, at 77, reprinted in STIMPSON, *supra* note 15, at 457.

³⁶STIMPSON, *supra* note 15, at 417 (statement by Dr. Bernice Sandler).

³⁷WOMEN'S BUREAU, U.S. DEPARTMENT OF LABOR, FACTS ON PROSPECTIVE AND PRACTICING WOMEN IN MEDICINE (1968), reprinted in STIMPSON, *supra* note 15, at 464. The following information is from that report.

ket academics face. In 1965-1966 women accounted for nine percent of the applicants and almost nine percent of the acceptances in medical schools. In that same year, of the women who applied, 47.7% were accepted; the figure for men was 48.2%. The study showed that women, who comprised 6.1% of the total active physicians, tended to prefer practice in hospitals, teaching, preventive medicine, administration, or research rather than private practice. In 1965, at least ten percent of all physicians engaged in anesthesiology, pediatrics, physical medicine and rehabilitation, preventive medicine, psychiatry, public health, and pulmonary diseases were women.³⁸

The results of a survey studying attitudes of members of the medical profession toward women physicians demonstrated no substantial difference from attitudes expressed by other professionals toward their female colleagues.³⁹ Women were basically suspect characters and carefully screened to ensure their commitment to medicine. The survey also revealed a strong reluctance to deal with or provide for pregnancy and childbearing situations.

Finally, consideration is given to the status of women in the legal profession.⁴⁰ There were in 1970 over 8,000 women lawyers in the United States. Although the federal government is deemed the most nondiscriminatory employer of women, the percentage of women attorneys holding federal positions declined from 7% in 1959 to 6.2% in 1969. Women tend to be hired at a lower grade and remain there longer than men. In other positions, such as judges and hearing examiners, the situation is worse.⁴¹ In law firms the situation is no less questionable. For example, a survey of forty major law firms in six different cities indicated there were only 186 women out of 2,708 attorneys.⁴² Once employed by a firm, a woman is likely to make much less money than her male colleague and will more often engage in trusts and estates, domestic relations, and tax work. Given these circumstances she is also less likely to become a partner.⁴³

³⁸When grouped in five categories women comprised the following percentages of total physicians in each category: general practice, 5.2%; medical specialties, 8.6%; surgical specialties, 3.5%; psychiatry and neurology 11.5%; and other specialties, 7.4%. *Id.* at 474.

³⁹H. KAPLAN, *STUDYING ATTITUDES OF THE MEDICAL PROFESSION TOWARD WOMEN PHYSICIANS: A SURVEY SPONSORED BY THE NATIONAL INSTITUTE OF MENTAL HEALTH* (1969), reprinted in STIMPSON, *supra* note 15, at 482.

⁴⁰The material in this section is from a statement submitted to the Special Subcommittee on Education by Margaret Laurance, reported in STIMPSON, *supra* note 15, at 502.

⁴¹In 1970, only one percent of federal judges were women. *Id.*

⁴²*Id.* at 505.

⁴³An interesting and repeatedly quoted study is White, *Women in the Law*, 65 MICH. L. REV. 1051 (1967).

The attitudes of members of the legal profession toward women are predictable as well as illustrative of attitudes held by other professionals. Law firms are concerned that a woman will marry and leave work, or if already married, will have children and quit. Women do marry but rarely cease working for that reason.⁴⁴ Women also have children and do sometimes stop working on that account, although this withdrawal from work may be, and in fact usually is, temporary. This career interruption is related to and affected by maternity leave provisions and problems of child care which will be discussed later. If a woman is already married and has older children, some employers will hesitate to hire her because they believe she is too old to train or does not have enough "productive" years left to make their investment worthwhile. Another concern expressed by law firms and a reason cited for considering a woman attorney "unqualified" is that clients will not accept advice from a woman. Finally, there is the belief in almost all the professions that a woman's character and personality will handicap her performance. In the case of an attorney it is often believed that she is not tough or analytical enough to be "successful."

Although all these professions are for the most part covered by equal employment opportunity laws which are outlined below, the status of women as professionals is not equal to that of men. This inequality results, as has been pointed out, from traditional attitudes, acceptance of stereotypes, and a general belief that women are innately unqualified. In a survey of 163 companies⁴⁵ some of the suggestions offered to foster compliance with equal opportunity laws and to overcome the above listed obstacles included the adoption of effective affirmative action programs, a national emphasis on hiring and promoting women, and the use of role models. The authors agree. Some of the ideas and infor-

⁴⁴*Id.* at 1066.

⁴⁵In December, 1971, the Bureau of National Affairs conducted a study among the BNA's Personnel Policies Forum and received responses from 163 nationwide companies. There were ninety-eight large companies with one thousand or more employees, fifty-eight percent of which were manufacturing, twenty-eight percent non-manufacturing, and fifteen percent non-business. In a majority of these firms women accounted for five percent or less of the first level supervisors, middle management, and professional staffs. However, fifty-eight percent of the companies stated that they had more women in management positions than ever before. Three-fourths of the companies had no women in top management. Cited as obstacles for women were lack of qualification and education and stereotyped roles or prejudices. Most companies perceived more discrimination against women in the industry as a whole than within their own companies. FAIR EMPL. PRAC. MANUAL, Company Policies and Practices 490:601.

mation presented in this Article are intended to simplify attainment of these objectives.

Several federal and state laws and regulations are relevant to women and employment practices within the ICJS. At the federal level these include the equal opportunity provisions of the Civil Rights Act of 1964,⁴⁶ the Fair Labor Standards Act,⁴⁷ Executive Order 11,246 relating to employment by federal contractors,⁴⁸ and provisions of the United States Constitution.⁴⁹ At the state level there are the Indiana Civil Rights Law⁵⁰ and local ordinances which regulate employment practices in cities and counties.⁵¹ The following is a brief introduction to the relevant portions of each. An analysis of frequently raised issues is deferred until later.

Basic to any understanding of equal opportunity laws is Title VII of the 1964 Civil Rights Act.⁵² Not only does it provide that it is an unlawful employment practice for an employer to fail or refuse to hire or to discharge an individual because of race, color, sex, religion, or national origin, but also it bans discrimination in compensation, terms, conditions, and privileges of employment.⁵³ More importantly, Title VII was amended in 1972 to include state and local governments as well as educational institutions in their

⁴⁶42 U.S.C. §§ 2000e *et seq.* (1970), *as amended*, (Supp. III, 1973) [hereinafter referred to as Title VII].

⁴⁷Equal Pay Act of 1963, 29 U.S.C. § 206(d) (1970); Equal Pay Amendments of 1972, *id.* § 213(a) (Supp. III, 1973); Fair Labor Standards Amendments of 1974, Act of April 8, 1974, Pub. L. No. 93-259, § 6(a)(2), U.S. Code Cong. & Adm. News 615, 619 (1974).

⁴⁸Exec. Order No. 11,246, 3 C.F.R. 169 (1974), 42 U.S.C. § 2000e (1970).

⁴⁹*E.g.*, U.S. CONST. amend. XIV.

⁵⁰IND. CODE §§ 22-9-1-1 to -12 (Burns 1973).

⁵¹*E.g.*, BLOOMINGTON, IND., MUNICIPAL CODE §§ 2.60.010 to .100 (1972).

⁵²42 U.S.C. §§ 2000e *et seq.* (1970), *as amended*, (Supp. III, 1973). Since the July 2, 1965, effective date there has been a wealth of articles explaining the ramifications of this statute, detailing various case law developments, and recommending future changes. For a fairly complete pre-1972 amendment article, see *Developments in the Law: Employment Discrimination and Title VII of the Civil Rights Act of 1964*, 84 HARV. L. REV. 1109 (1971) [hereinafter cited as *Developments*]. A fairly detailed bibliography may be found in 1 WOMEN'S RTS. L. RPTR. 78 (Winter-Spring 1972-73).

⁵³42 U.S.C. § 2000e-2(a)(1) (1970). The Act further provides that it is unlawful for an employer

to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise *adversely affect his status* as an employee, because of such individual's race, color, religion, sex, or national origin.

Id. § 2000e-2(a)(2) (Supp. III, 1973) (emphasis added).

roles as employers.⁵⁴ One particular provision of Title VII which affects most sex discrimination cases is the section dealing with the bona fide occupational qualification (bfoq).⁵⁵ This provision allows an employer to hire or to employ persons on the basis of their sex only in those limited circumstances in which the employee's sex is "reasonably necessary to the normal operation of that particular business or enterprise."⁵⁶ However, this exception has been very narrowly construed by the courts⁵⁷ and the Equal Employment Opportunity Commission (EEOC) as well.⁵⁸

⁵⁴*Id.* § 2000e(b) defines an employer as "a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year. . . ." An "employee" is defined as

an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political sub-division of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's *personal staff*, or an appointee on the policy making level or an immediate advisor with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political sub-division.

Id. § 2000e(f) (emphasis added).

⁵⁵*Id.* § 2000e-2(e) (1).

⁵⁶*Id.*

⁵⁷The first test of the EEOC's position and guidelines, see note 58 *infra*, was *Weeks v. Southern Bell Tel. & Tel. Co.*, 408 F.2d 228 (5th Cir. 1969), which held that an employer must show a factual basis for his belief that women as a class would be unable to perform the job, which in that case involved lifting weight over thirty pounds. However, the *Weeks* decision did not go as far as it should have since the court would apparently uphold the rule if "substantially all" women could not perform. This standard is still based on characteristics associated with one sex, not individual capabilities. For other weight and hour limitation cases, see *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711 (7th Cir. 1969); *Cheatwood v. South Cent. Bell Tel. & Tel. Co.*, 303 F. Supp. 754 (M.D. Ala. 1969); *Rosenfeld v. Southern Pac. Co.*, 293 F. Supp. 1219 (C.D. Cal. 1968), *aff'd*, 444 F.2d 1219 (9th Cir. 1971).

Another case interpreting the bfoq is *Diaz v. Pan Am. World Airways, Inc.*, 442 F.2d 385 (5th Cir.), *cert. denied*, 404 U.S. 950 (1971), which held that customer preference was irrelevant in determining whether men were suitable for the job of flight cabin attendant. Essential to the court's holding was a very narrow definition of the job.

A narrow interpretation of the bfoq exception is necessary if Title VII is to retain its force since it provided a potential loophole for employers who wish to continue discriminatory practices. Although inconsistent decisions were common during the first years of litigation, most courts accept the notion that the proof of a bfoq cannot be made by a commonly held stereotype.

⁵⁸Title VII created the EEOC which is charged with the responsibility of administering the Act. 42 U.S.C. § 2000e-4 (1970), *as amended*, (Supp. III, 1973). The Commission has the duty to seek voluntary conciliation of disputes; to bring civil actions against noncomplying employers, unions, and

The bfoq provision and the apparent need for its continual interpretation illustrates that the law generally, and equal opportunity laws in particular, must deal with many myths about women workers. For example, women are often considered emotionally unstable and physically weak; hence, it is deemed necessary to protect them from physical and moral hazards. Or, since women really do not need to work, they are unlikely to be long-term employees. These and other traditional attitudes and stereotyped notions about women do not form the basis for a valid bfoq exception. "Sex" itself is the occupational qualification. "It is only where the intrinsic attributes of one sex or the other are a necessary qualification for the job that the bfoq clause should come into play."⁵⁹ The policies expressed in Title VII and the EEOC's

employment agencies, *id.* § 2000e-5(f) (1) (Supp. III, 1973); and to promulgate guidelines, *id.* § 2000e-12(a) (1970). In the nine year history of the EEOC, the Commission has twice changed its position on the bfoq, especially in relation to state protective laws. *See* 29 C.F.R. § 1604.1(b), (c) (1966); 29 C.F.R. § 1604.1(b) (1), (2) (1970); 29 C.F.R. § 1604.2(b) (1973). Today its position is very clear. 29 C.F.R. § 1604.2(a) (1973) states:

The Commission believes that the bona fide occupational qualification exception as to sex should be interpreted narrowly. Labels—"Men's jobs" and "Women's jobs"—tend to deny employment opportunities unnecessarily to one sex or the other.

(1) The Commission will find that the following situations do not warrant the application of the bona fide occupational qualification exception:

(i) The refusal to hire a woman because of her sex based on assumptions of the comparative employment characteristics of women in general. For example, the assumption that the turnover rate among women is higher than among men.

(ii) The refusal to hire an individual based on stereotyped characterizations of the sexes. Such stereotypes include, for example, that men are less capable of assembling intricate equipment; that women are less capable of aggressive salesmanship. The principle of nondiscrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

(iii) The refusal to hire an individual because of the preferences of the coworkers, the employer, clients or customers except as covered specifically in subparagraph (2) of this paragraph.

⁵⁹*Developments, supra* note 52, at 1179. *See generally id.* at 1176-86. The nature of the bfoq exception is more easily demonstrated if one remembers that Congress chose to ignore race-defined differences. An examination of examples of religion and national origin bfoqs also reveals the meaning of the exemption. A theology professor at a religious college was a common example before the 1972 amendment which exempted all employment decisions by religious institutions. 42 U.S.C. § 2000e-1 (Supp. III, 1973). This amendment, however, raises serious first amendment problems.

guidelines lead to the rejection of stereotyped employment decisions. Sex is to be considered irrelevant except in only rare circumstances. Curiously, the overall policy expressed by this part of the civil rights legislation is one which is both conservative and traditional: the "work ethic." That is, if someone wants to work, no one should put artificial barriers in his or her way.

A second federal statute which relates to women and employment is the Fair Labor Standards Act.⁶⁰ Of primary importance is the 1963 Equal Pay Act⁶¹ amendment which mandates equal pay for equal work regardless of sex. The most difficult problems posed by the statute are encountered in determining whether male and female workers are actually doing substantially the same work, and if so, whether any pay differential which exists is based on factors other than the employee's sex. Within the ICJS, such problems might arise in the context of whether a woman jail matron should receive the same compensation as a male turnkey. In 1972 the Equal Pay Act was amended⁶² to extend its coverage to professional, executive, and administrative personnel. Obviously, the question of whether two executives are doing substantially the same work will pose even more difficult problems. The 1974 amendments to the Fair Labor Standards Act⁶³ extend its coverage to include individuals employed by state or local governments subject to a rather typical exclusion of elected officials and policy makers.⁶⁴

Thirdly, there are the provisions of Executive Order 11,246⁶⁵ which prohibit certain federal contractors from discriminating against any employee or applicant on the basis of sex, as well as race, religion, or national origin. This Order also requires "af-

See King's Garden, Inc. v. FCC, 498 F.2d 51 (D.C. Cir. 1974). The example given in Congress was an Italian chef in an Italian restaurant. 110 CONG. REC. 2549, 2583-93 (1964). This example should be refined to include only those cases in which the patrons are aware of the chef's nationality and feel that it is important.

⁶⁰29 U.S.C. §§ 201-19 (1970), *as amended*, Act of April 8, 1974, Pub. L. No. 93-259, U.S. Code Cong. & Adm. News 615 (1974).

⁶¹Act of June 10, 1963, Pub. L. No. 88-38, § 3, 77 Stat. 56, *amending* 29 U.S.C. § 206 (codified at 29 U.S.C. § 206(d) (1970)).

⁶²Act of June 23, 1972, Pub. L. No. 92-318, § 906(b)(1), 86 Stat. 375, *amending* 29 U.S.C. § 213 (1970) (codified at 29 U.S.C. § 213 (Supp. III, 1973)).

⁶³Fair Labor Standards Amendments of 1974, Act of April 8, 1974, Pub. L. No. 93-259, U.S. Code Cong. & Adm. News 615 (1974), *amending* 29 U.S.C. §§ 201-19 (1970).

⁶⁴*Id.* § 6(a)(2), U.S. Code Cong. & Adm. News 619 (1974). *See also* 42 U.S.C. § 2000e(f) (Supp. III, 1973).

⁶⁵3 C.F.R. 402 (1974), 42 U.S.C. § 2000e (1970); Exec. Order No. 11,478, 3 C.F.R. 446 (1974), 42 U.S.C. § 2000e (1970). The Order covers those contractors who receive more than \$10,000.

firmative action"⁶⁶ by employers to ensure that applicants are employed and that employees are treated equally during employment, without regard to their race, sex, religion, or national origin.

A fourth federal standard relevant to employment policies and practices of governmental employers is the Constitution. The due process and equal protection clauses of the fourteenth amendment provide some degree of protection against arbitrary discrimination for women who work for state and local governments or their agencies.⁶⁷ The employer not only must provide "equal protection" but must also allow the woman employee her first amendment freedoms. Before the recent federal amendments to Title VII and the Fair Labor Standards Act, these constitutional protections were very important, although limited somewhat in their reach.⁶⁸

⁶⁶For a detailed discussion of affirmative action, see text accompanying note 339 *infra*. Although the Department of Labor, Office of Federal Contract Compliance (OFCC) has primary authority for enforcement of the Executive Order, the OFCC has, in many cases, delegated that authority. In the present case, the Law Enforcement Assistance Administration has been designated. See note 341 *infra*.

⁶⁷The extent of protection provided government employees is presently unsettled and depends upon the particular issues and facts. Recently the Supreme Court struck down mandatory maternity leaves for public school teachers primarily on the basis of the due process clause of the fourteenth amendment, *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632 (1974); denied fifth amendment due process claims by federal employees, *Arnett v. Kennedy*, 94 S. Ct. 1633 (1974); *Sampson v. Murray*, 94 S. Ct. 937 (1974); and distinguished fourteenth amendment claims of untenured college professors, *Roth v. Board of Regents*, 408 U.S. 564 (1972); *cf. Perry v. Sindermann*, 408 U.S. 593 (1972). The Court also upheld the constitutionality of the Hatch Act, 5 U.S.C. § 7324(a)(2) (1970), in *United States Civil Service Comm'n v. National Ass'n of Letter Carriers*, 413 U.S. 548 (1973). However, the Court let stand a circuit court decision which held that the dismissal of non-civil service public employees on the basis of membership in or support of a political party violated the employees' fourteenth amendment rights, *Illinois State Employees Union v. Lewis*, 473 F.2d 561 (7th Cir. 1972), *cert. denied*, 410 U.S. 908, 943 (1973).

For a critique of the use of federal courts as forums for employment-due process suits, see Mohr & Willett, *Constitutional and Procedural Aspects of Employee Access to the Federal Courts: Promotion and Termination*, 8 VALPARAISO L. REV. 303 (1974).

⁶⁸It is more certain that a government employer must provide its employee "equal protection." Section 1983 has been the usual mode for raising such fourteenth amendment constitutional questions:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Relevant state statutes which regulate employment practices are the Indiana Civil Rights Law⁶⁹ and various local ordinances. The Indiana Civil Rights Law provides for equal opportunity in employment as well as in education, housing, and public conveniences and accommodations in order "to eliminate segregation or separation based solely on race, religion, color, sex, national origin or ancestry."⁷⁰ Under the Indiana Law an "employer includes the state, or any political or civil subdivision thereof, and any person employing six or more persons within the state,"⁷¹ and an employee is defined as "any person employed by another for wages or salary."⁷² This Act also contains authority for cities and counties to set up their own local equal opportunity commissions.⁷³

These laws, although their origins differ, are consistent in the demands they place upon employers. Their basic aim is to encourage, indeed force, employers to review employment practices and to insure that decisions are made on the basis of individual capacities and capabilities rather than on stereotyped images and characteristics. Of course, these statutes and regulations may be affected by the "police powers" limitation or their status made dependent upon the legislative authority of the city, town, or county which enacts them, but they are, the authors believe, crucial.⁷⁴

42 U.S.C. § 1983 (1970).

Thus, when state or individual action deprives persons of rights secured by the federal Constitution or a federal statute, section 1983 provides a cause of action for damages and injunctive or other equitable relief. For some representative cases, see text accompanying notes 286, 293 *infra*. But just as the Supreme Court had been hesitant to declare classifications based on sex unconstitutional until recently, *see Reed v. Reed*, 404 U.S. 71 (1971), the lower courts have exhibited the same reluctance to apply section 1983. It is curious that the Supreme Court changed its position at about the same time that Title VII was extended to government and educational employees and the Equal Rights Amendment was submitted to the states.

⁶⁹IND. CODE §§ 22-9-1-1 to -12 (Burns 1974).

⁷⁰*Id.* § 22-9-1-2.

⁷¹*Id.* § 22-9-1-3(h).

⁷²*Id.* § 22-9-1-3(i).

⁷³*Id.* § 22-9-1-12. For example, Bloomington's Human Rights Commission is patterned directly after the Indiana Commission and uses the same language in its ordinance with similar definitions of "employer" and "employee." BLOOMINGTON, IND., MUNICIPAL CODE §§ 2.60.010 to .100 (1972).

⁷⁴Title VII, the Indiana Civil Rights Law, and the Bloomington Human Rights Commission ordinance have similar procedures, including specific time limitations, and have established broad remedial powers such as the power to order affirmative action, reinstatement, upgrading and compensatory damages. The state and municipal commissions are further empowered to issue cease and desist orders which are enforceable through appropriate courts. There are, in addition to those cited, other laws which regulate discrimination in employment. For example, age discrimination laws exist at both the federal

III. ICJS EMPLOYMENT REQUIREMENTS

In light of this background concerning women and employment and the general legal environment thereof, this section turns now to the specific statutory requirements for certain ICJS executive, managerial and professional positions. In the next section these specific requirements will be analyzed for their possible discriminatory effects on women.

A. Law Enforcement Officials

The notion of women in law enforcement is not a new concept in this country. The Los Angeles Police Department began hiring women for full-time police service in 1910.⁷⁵ Historically policewomen were hired to assist with adult women and juvenile suspects.⁷⁶ Despite media rhetoric to the contrary, the police-woman's role today has not changed much from those early years.⁷⁷ Particularly noteworthy, though, is the increasing use of policewomen in rape cases.⁷⁸

There has been increasing public interest in the status of women in law enforcement in Indiana.⁷⁹ College coeds in Indiana

and state level. 29 U.S.C. §§ 621 *et seq.* (1970); IND. CODE §§ 22-9-2-1 to -11 (Burns 1974). Furthermore, if a union is involved an employer may be under other constraints, including a duty of fair representation analogous to the one under the National Labor Relations Act. *United Packinghouse Workers v. NLRB*, 416 F.2d 1126 (D.C. Cir. 1969). Finally, one commentator has advanced the argument that 42 U.S.C. § 1981 (1970) may properly be invoked in a suit for sex discrimination and is indeed preferable. *See Stanley, Sex Discrimination and Section 1981*, 1 WOMEN'S RTS. L. RPTR. 2 (Spring 1973).

In most of the following discussion we will focus on the specific requirements and legal interpretations of Title VII since it is the most inclusive and has the most case law development.

⁷⁵E. GRAPER, AMERICAN POLICE ADMINISTRATION 226 (1921); C. OWINGS, WOMEN POLICE: A STUDY OF THE DEVELOPMENT AND STATUS OF THE WOMEN POLICE MOVEMENT 99 (1925).

⁷⁶E. GRAPER, *supra* note 75, at 228-29.

⁷⁷P. BLOCH & D. ANDERSON, *supra* note 5, at 49; PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION, TASK FORCE REPORT ON THE POLICE 125 (1967).

⁷⁸In 1973 the New York City Police Department established the Sex Crimes Analysis Unit within the Detective Bureau to handle sex crimes. This unit is staffed by twenty-six female detectives and is headed by Lt. Mary L. Keefe. Cottell, *Rape—The Ultimate Invasion of Privacy*, 43 F.B.I. LAW ENF. BULL. 2 (May 1974). For a description of Miami's experience, *see Garmire, Female Officers in the Department*, 43 F.B.I. LAW ENF. BULL. 11 (June 1974).

⁷⁹*See, e.g.*, Indiana Daily Student, Mar. 8, 1974, at 5, col. 3 (Professor Backs More Policewomen); Bloomington Daily Herald-Telephone, Mar. 2, 1974, at 8, col. 1 (Opportunities Are Limited in Criminal Justice Field for Women); *id.*, Feb. 22, 1974, at 10, col. 7 (Ginny Wasser Is County's 1st Female Candidate for Sheriff); Indianapolis Star, Aug. 8, 1973, at 34, col. 7 (Use of Policewomen in New Jobs Indicated).

are considering law enforcement careers in increasing numbers.⁸⁰ In contrast, the Indiana State Police has no female officers and until 1973 accepted applications only from men.⁸¹ Although some women applicants have passed preliminary screening by the Indiana State Police,⁸² none has yet become Indiana's first state policewoman.⁸³ Nationwide, women not only are entering law enforcement at the patrol level but also are beginning to move into positions such as investigators, desk sergeants, and commanders, as well as into other middle-level executive and management posts.⁸⁴ The scarcity of women at these levels in Indiana seems to be a phenomenon rare within the ICJS.⁸⁵ Thus, this study turns to a survey of the legal qualifications for such middle and upper level ICJS law enforcement positions to determine if the impediments lie there.

On March 9, 1945, Indiana's State Police Department was created by statute⁸⁶ under the administration, management, and control of the State Police Board with a governor-appointed Superintendent of the State Police. The Superintendent is the executive officer and has general charge of the work of the department. The express statutory qualifications provide that:

The superintendent shall be selected on the basis of training and experience, and shall have served at least five (5) years as a police executive, or have had five (5) years' experience in the management of military, semi-military or police bodies of men, to equip him for the position

⁸⁰Approximately twenty percent of upperclass female undergraduates majoring in forensic studies at Indiana University, Bloomington in September of 1973 indicated that they plan to seek employment in law enforcement occupations. V. Streib, *Forensic Studies Students and Their Evaluation of Forensic Studies*, October 1973 (unpublished survey report in Department of Forensic Studies, Indiana University, Bloomington, Indiana).

⁸¹Bloomington Daily Herald-Telephone, June 20, 1973, at 2, col. 1; Louisville Courier-Journal, Aug. 19, 1973, at A2, col. 1.

The Indiana Civil Liberties Union has recently filed suit on behalf of an unsuccessful female applicant challenging the state police height requirement as discriminatory, *Crosey v. Bowen*, Civil No. 74-396 (S.D. Ind., filed July 22, 1974). On September 16, 1974, the Indiana State Police Board voted three to two to eliminate the 5 foot 9 inch minimum. The minimum, if any, to be substituted was not revealed. The action by the Board presumably was in reaction to *Crosey*. Indianapolis Star, Sept. 17, 1974, at 12, col. 1.

⁸²Indianapolis Star, Sept. 8, 1973, at 24, col. 7.

⁸³*Id.*, Oct. 19, 1973, at 21, col. 2.

⁸⁴P. BLOCH & D. ANDERSON, *supra* note 5, at 53; Pogrebin, *supra* note 4, at 36.

⁸⁵The Appendix to this Article reveals the extreme rarity of women in law enforcement in Indiana.

⁸⁶IND. CODE § 10-1-1-1 (Burns 1973).

and shall possess training in police affairs or public administration.⁸⁷

The general tenor of the qualifications indicates that a male superintendent is contemplated. As noted above, Indiana's State Police Department has no female officers so of course no women have served five years as a police executive in that department. Almost as rare are women who have had five years of experience in the management of any military, semi-military or police bodies of men. Thus, the pool of prospective superintendent candidates with sufficient experience is noticeably short of women. The statute's training requirement for superintendents seems to be met by all state police employees,⁸⁸ since no police employee is assigned to regular active duty until successful completion of training school.⁸⁹ The Superintendent, with the approval of the State Police Board,⁹⁰ determines the qualifications and prerequisites for the various middle-management positions⁹¹ and appoints persons to those positions.⁹² Thus, as is common in police agencies, state police employees enter at the "patrol" level and work their way up through the ranks.

In Indiana the office of county sheriff has existed as a constitutional office since November 2, 1948.⁹³ Sheriffs serve four year terms and may not serve more than eight years in any twelve year period.⁹⁴ As county officers, sheriffs are elected by the voters of the respective counties.⁹⁵ Moreover, a candidate for sheriff must be an elector of the county and an inhabitant of the county "during one year next preceeding his appointment."⁹⁶ Sheriffs have general police powers within the county, manage the jail and prisoners therein, and serve court processes.⁹⁷ They may appoint deputy sheriffs⁹⁸ or county policemen⁹⁹ and, with the approval of the sheriff's merit board if one exists,¹⁰⁰ determine

⁸⁷*Id.*

⁸⁸A police employee is an employee of the State Police Department who is assigned police work as a peace officer. *Id.* § 10-1-1-2(3).

⁸⁹*Id.* § 10-1-1-5.

⁹⁰*Id.* § 10-1-1-1.

⁹¹*Id.* § 10-1-1-3.

⁹²*Id.* § 10-1-1-4.

⁹³IND. CONST. art. 6, § 11.

⁹⁴*Id.*

⁹⁵*Id.* art. 6, § 2; IND. CODE § 17-3-5-1 (IND. ANN. STAT. § 49-2801, Burns 1964).

⁹⁶IND. CONST. art. 6, § 4.

⁹⁷IND. CODE §§ 17-3-5-2, -3 (IND. ANN. STAT. §§ 49-2802, -2803, Burns 1964).

⁹⁸*Id.* §§ 17-3-71-2, -13-1 (IND. ANN. STAT. §§ 49-1002, -2805).

⁹⁹*Id.* §§ 17-3-14-3, -6 (IND. ANN. STAT. §§ 49-2823, -2825).

¹⁰⁰*Id.* § 17-3-14-1 (IND. ANN. STAT. § 49-2821).

the qualifications and prerequisites for the various middle-management positions and appoint persons to those positions.¹⁰¹ Since the office of sheriff is elective in Indiana, working up through the ranks is not the sole means of access to that position. Although most successful sheriff candidates probably have had experience in law enforcement, the only mandatory requirement other than those mentioned above is election by the voters.

Township constables are elected for four year terms¹⁰² and act as general conservators of the peace¹⁰³ throughout their respective counties¹⁰⁴ with power to arrest fugitives anywhere in the state.¹⁰⁵ Township constables must reside and keep their offices within their respective townships.¹⁰⁶ As with sheriffs, township constables are elected, so the qualifications for office are primarily determined by the voters.

The most prominent category of law enforcement officials for purposes of this study is chiefs of city police departments. Chiefs are appointed by the mayor with approval of the board of public safety in first class cities¹⁰⁷ of which in Indiana there is only one—Indianapolis. In Gary,¹⁰⁸ Evansville,¹⁰⁹ Michigan City,¹¹⁰ and Hammond,¹¹¹ the mayor has the sole power to appoint the police chief. Otherwise, police chiefs are appointed by the board of public safety in larger cities¹¹² and by the board of metropolitan police commissioners¹¹³ in most smaller cities. A police chief of any city over 10,000 population must have had at least five years of continuous service with that city's police department immediately prior to appointment.¹¹⁴ The Indianapolis police chief must be chosen from the ranks of lieutenant and above in that department,¹¹⁵ and in Hammond the chief normally must be chosen from the ranks of captain or above.¹¹⁶ In Evansville and Michi-

¹⁰¹*Id.* § 17-3-14-6 (IND. ANN. STAT. § 49-2825).

¹⁰²*Id.* § 3-1-18-1 (Burns 1972).

¹⁰³*Id.* § 17-4-36-2 (IND. ANN. STAT. § 49-3403, Burns 1964). *State v. Clements*, 215 Ind. 666, 22 N.E.2d 819 (1939); *Wiltse v. Holt*, 95 Ind. 469 (1884); *Vandever v. Mattocks*, 3 Ind. 479 (1852).

¹⁰⁴IND. CODE § 17-4-36-5 (IND. ANN. STAT. § 49-3407, Burns 1964).

¹⁰⁵*Id.* § 17-4-36-7 (IND. ANN. STAT. § 49-3409).

¹⁰⁶IND. CONST. art. 6, § 6.

¹⁰⁷*Id.* §§ 19-1-7-1, -7 (IND. ANN. STAT. §§ 48-6204, -6210, Burns 1963).

¹⁰⁸*Id.* §§ 19-1-21-1, -3(b) (IND. ANN. STAT. §§ 48-6241, -3(b)).

¹⁰⁹*Id.* §§ 19-1-29-1, -3(d) (IND. ANN. STAT. §§ 48-6250, -6252(d)).

¹¹⁰*Id.*

¹¹¹*Id.* §§ 19-1-14-1, -6 (IND. ANN. STAT. §§ 48-6260, -6265).

¹¹²*Id.* § 18-1-11-2 (IND. ANN. STAT. § 48-6102).

¹¹³*Id.* § 19-1-34-1 (IND. ANN. STAT. § 48-6302).

¹¹⁴*Id.* §§ 18-2-1-1.5, 19-1-27-1 (IND. ANN. STAT. §§ 48-1201, -6157).

¹¹⁵*Id.* § 19-1-7-7 (IND. ANN. STAT. § 48-6210).

¹¹⁶*Id.* § 19-1-14-6 (IND. ANN. STAT. § 48-6265).

gan City, the appointment to chief can come from any rank,¹¹⁷ as in most smaller cities.¹¹⁸

Promotion to any rank other than chief requires at least two years of continuous service with that city's police department immediately prior to promotion.¹¹⁹ Under Indianapolis' merit system mental and physical qualifications, habits, conduct, service, and promotion school grades are considered in promotion selections.¹²⁰ In Indianapolis, the captain of traffic, the chief of detectives, and the inspectors of police are chosen by the Board of Public Safety upon nomination by the chief of police from the ranks of lieutenant or above.¹²¹ Evansville and Michigan City have an elaborate statutory scheme for promotion. In rating for promotion purposes, the grade received on a written examination is fifty percent of the rating, past performance record is forty percent of the rating, and seniority is ten percent of the rating.¹²² Promotions to any rank for detective candidates are made from the rank of corporal.¹²³

Since promotion to an executive or managerial law enforcement position requires prior service with that law enforcement agency,¹²⁴ the fundamental screening takes place at the entry level. Employment for women at the entry level is outside the scope of this study but will be considered briefly since it is the first hurdle for would-be Indiana police executives and managers. Typically new appointees to large Indiana city police departments must meet residency, age, police record, education and various examination requirements.¹²⁵

¹¹⁷*Id.* § 19-1-29-3(d) (IND. ANN. STAT. § 48-6252(d)).

¹¹⁸*Id.* § 19-1-34-1 (IND. ANN. STAT. § 48-6302).

¹¹⁹*Id.* § 19-1-27-1 (IND. ANN. STAT. § 48-6157).

¹²⁰*Id.* § 19-1-7-3 (IND. ANN. STAT. § 48-6206).

¹²¹*Id.* § 19-1-7-7 (IND. ANN. STAT. § 48-6210).

¹²²*Id.* § 19-1-29-3 (IND. ANN. STAT. § 48-6252).

¹²³*Id.* § 19-1-29-3(b)(3) (IND. ANN. STAT. § 48-6252(b)(3)). In Hammond, promotion is based upon seniority (40%), written examination (40%), past performance (10%), and personal interview (10%). *Id.* § 19-1-14-14 (IND. ANN. STAT. § 48-6273). Political affiliation is expressly irrelevant to the promotion decision. *Id.* § 19-1-14-17 (IND. ANN. STAT. § 48-6276).

¹²⁴*Id.* § 19-1-27-1 (IND. ANN. STAT. § 48-6157).

¹²⁵*E.g., id.* §§ 19-1-2-1, -7-1, -21-4, -14-8, -29-5-1 (IND. ANN. STAT. §§ 48-6106, -6204, -6244, -6267, -6288, Burns Supp. 1974). Typically, prospective officers must: (1) reside in the city of which an appointee, (2) be between twenty-one or twenty-three and thirty-three years of age, (3) have no felony convictions, (4) be certified for participation in the pension plan, (5) pass a preliminary physical and aptitude examination, (6) successfully complete police candidates' school, and (7) pass an examination covering the police candidates' school plus physical condition, mental alertness, character, habits, reputation, aptitude and general fitness.

As early as 1905 Indiana statutorily provided for women in policing—at least as police matrons.¹²⁶ Police matrons' duties include the search and care of all women prisoners and children who are arrested and detained in jail or at the station house. Her duties also include attendance at proceedings involving women or children. Although the police matron has all the authority of a police officer, the qualifications for the position are unique:

Such police matron shall not be under thirty-five (35) years of age, shall be fully qualified and shall be of good moral character. Before appointment, she must be recommended in writing by not less than twenty (20) women and five (5) men, all of whom shall have been residents of such city for at least five (5) years next previous to such appointment.¹²⁷

In 1919 a statute was passed expressly empowering the Indianapolis Board of Safety to appoint women as regular members of the police force.¹²⁸ Moreover, the Indiana Supreme Court held in 1935 that a second class city board of public safety had the authority to appoint a woman to serve in a capacity other than a police matron.¹²⁹

With the exception of the special situation of the police matron, statutory requirements for police applicants apparently do not discriminate against women and at least in one case expressly establish women as appropriate candidates. Similarly, there is no explicit sex discrimination in the qualifications for promotion to the various ranks, including that of chief. Further analysis of these laws will be found in the next section of this Article.

B. Court Officials

Indiana court officials—prosecutors, defense attorneys, and judges—are extremely powerful agents within the Indiana Criminal Justice System. Of course, these officials are lawyers, and the discrimination against women which has long pervaded the legal profession in this country¹³⁰ has had its effect on the role of women in the courts. Although women are entering Indiana law schools in record numbers, women law graduates who become criminal prosecutors, criminal defense attorneys, or criminal court judges

¹²⁶*Id.* § 18-1-11-17 (IND. ANN. STAT. § 48-6123, Burns 1963).

¹²⁷*Id.*

¹²⁸*Id.* § 19-1-17-1 (IND. ANN. STAT. § 48-6203).

¹²⁹*Snowden v. Stackert*, 207 Ind. 442, 193 N.E. 586 (1935).

¹³⁰*Dinerman, Sex Discrimination in the Legal Profession*, 55 A.B.A.J. 951 (1969); *Kass, A Woman's View of Law School*, 15 STUDENT L.J. 4 (1969); *Sassower, The Legal Profession and Women's Rights*, 25 RUTGERS L. REV. 54 (1970); *White, supra* note 43.

are still exceptionally rare.¹³¹ Again this section will examine Indiana's laws to see if the reason lies there, looking at the qualifications for prosecutors, defense attorneys, and then judges at each political subdivisional level.

Women prosecutors are uncommon¹³² and often are seen as appropriate primarily for cases involving crimes against women, particularly rape.¹³³ At the state level, the Indiana Attorney General represents Indiana in all criminal cases before the Indiana Supreme Court.¹³⁴ By statute, the Attorney General must be a citizen of Indiana, licensed to practice law in Indiana, and elected by Indiana voters.¹³⁵ The Attorney General can select and appoint Deputy Attorneys General who must be citizens of Indiana licensed to practice law in the state.¹³⁶ In each judicial circuit the voters elect a prosecuting attorney.¹³⁷ Prosecuting attorneys must have been admitted to the practice of law in Indiana prior to the election and must reside within their circuits.¹³⁸ The office is constitutional¹³⁹ and the prosecuting attorney can appoint deputies. As with the office of sheriff, women qualified to be Attorney General or prosecuting attorney must be elected. No woman in Indiana has ever met that test.

Another court-official position in the ICJS is the defense attorney. Any woman admitted to the Indiana Bar is a criminal defense attorney from that moment on if she wishes to be. Although several states, notably California and New York, are actively involved in specialization programs to certify only qualified attorneys as criminal law specialists,¹⁴⁰ Indiana still admits all

¹³¹See Appendix.

¹³²Apparently Monroe County has the only woman serving as the chief deputy to a county prosecutor in Indiana. See Ellett, *supra* note 7.

¹³³*E.g., id.*; Bloomington Daily Herald-Telephone, Feb. 22, 1974, at 6, col. 1 (Female Prosecutors Get Rape Convictions).

¹³⁴IND. CODE § 4-6-2-1 (Burns 1974); *State v. Sopher*, 157 Ind. 360, 61 N.E. 785 (1901); *Stewart v. State*, 24 Ind. 142 (1865).

¹³⁵IND. CODE §§ 4-6-1-2, -3 (Burns 1974).

¹³⁶*Id.* §§ 4-6-1-4, -5-1, -5-2, -5-6, -5-6-1-1.

¹³⁷IND. CONST. art. 7, § 16; IND. CODE § 33-14-1-1 (IND. ANN. STAT. § 49-2501, Burns 1964).

¹³⁸IND. CONST. art. 7, § 16; *State ex rel. Indiana State Bar Ass'n v. Moritz*, 244 Ind. 156, 191 N.E.2d 21 (1963); *State ex rel. Howard v. Johnston*, 101 Ind. 223 (1885).

¹³⁹*State ex rel. Neeriemer v. Daviess Circuit Court*, 236 Ind. 624, 142 N.E.2d 626 (1957); *State ex rel. Pitman v. Tucker*, 46 Ind. 355 (1874).

¹⁴⁰The United States District Court for the Southern District of New York is informally certifying lawyers considered eligible for appointment to defend accused persons under the Criminal Justice Act, and the State Bar of California issues certificates of specialization in criminal law. See Note, *Chief Justice Burger Proposes First Steps Toward Certification of Trial Advocacy Specialists*, 60 A.B.A.J. 17 (1974).

new lawyers to the general practice of law.¹⁴¹ An applicant for admission to the Indiana Bar must (1) be at least twenty-one years of age; (2) be a citizen of the United States; (3) be of good moral character; (4) be a graduate of an approved law school; (5) successfully complete the bar examination; (6) be a bona fide resident of Indiana; and (7) have the intent to practice law in Indiana.¹⁴² In addition, non-Indiana attorneys can be admitted on foreign license,¹⁴³ and occasionally applicants are admitted on motion without examination for military reasons.¹⁴⁴

The Indiana Supreme Court appoints another important official in the ICJS, the State Public Defender, who must be an Indiana resident and a practicing lawyer for at least three years.¹⁴⁵ Circuit court judges of certain larger counties also have the authority to appoint public defenders,¹⁴⁶ request the State Public Defender to provide a defense,¹⁴⁷ or contract with a local attorney or attorneys to regularly provide for the defense of indigent accuseds.¹⁴⁸ A particularly interesting provision is relevant when the State Public Defender is requested by a circuit court judge to provide a defense for a particular case: the Public Defender may defend the case personally, assign a deputy, or appoint "any practicing attorney who is competent to practice law in criminal cases" to defend the case.¹⁴⁹ This is the only statutory reference to the notion that criminal defense work may be a recognizable specialty not held by all practicing attorneys in Indiana.

Thus, a woman could be a criminal defense attorney so long as she is admitted to the practice of law in Indiana and is selected by a criminal client or appointed by a judge. However, Indiana women lawyers are rare and Indiana women criminal defense lawyers are more uncommon still.¹⁵⁰ The one striking exception is Mrs. Harriette Bailey Conn, the present State Public Defender of Indiana.

¹⁴¹IND. RULES OF PROC., Rule A.D. 3 (Burns Supp. 1974).

¹⁴²*Id.*, Rules A.D. 13, 17, 21. Some of these requirements have been challenged as discriminatory on the basis of the equal protection clause, *e.g.*, *In re Griffiths*, 413 U.S. 717 (1973). However, there is no evidence to believe that these requirements have a disparate effect on women and should therefore be illegal on the basis of sex discrimination. For further discussion of the nature of the "disparate effect" argument, see text accompanying note 287 *infra*.

¹⁴³IND. RULES OF PROC., Rule A.D. 6 (Burns Supp. 1974).

¹⁴⁴*Id.*, Rule A.D. 19.

¹⁴⁵IND. CODE § 33-1-7-1 (IND. ANN. STAT. § 13-1401, Burns 1956).

¹⁴⁶*Id.* § 35-11-1-1 (IND. ANN. STAT. § 9-3501, Burns Supp. 1974).

¹⁴⁷*Id.* § 33-9-11-1 (IND. ANN. STAT. § 9-3504).

¹⁴⁸*Id.* § 33-9-10-1 (IND. ANN. STAT. § 9-3509).

¹⁴⁹*Id.* § 33-9-11-2 (IND. ANN. STAT. § 9-3505).

¹⁵⁰*See* Appendix.

Since courts are the center of the Indiana Criminal Justice System, the judges of those courts are powerful agents within that system. Women are infrequently judges¹⁵¹ for many unarticulated reasons, but an analysis of Indiana's legal requirements for judges reveals no explicit bar to women. Qualifications for the judicial offices of the Indiana Supreme Court and Court of Appeals, circuit courts, superior courts, criminal courts, county courts, magistrates courts, city courts, and municipal courts—all of which are involved in the Indiana Criminal Justice System in varying degrees—are the next subject of examination. Since 1953 all Indiana judges at both the state and county levels must have been duly admitted to practice law in Indiana or have had previous experience as an Indiana judge.¹⁵² Of course, if the judicial office is elective the prospective judge must meet the qualifications demanded by the voters. Beyond these general judicial qualifications, certain judicial offices may have specific requirements.

The Indiana Supreme Court has the power to review all questions of law in criminal cases and to review and revise sentences imposed.¹⁵³ Thus, justices of this court are professionals within the ICJS. The justices are nominated by the Judicial Nominating Commission,¹⁵⁴ appointed by the governor,¹⁵⁵ and then approved or rejected by the voters every ten years.¹⁵⁶ Constitutional requirements for nomination are United States citizenship and either admission to the practice of law in Indiana for not less than ten years or service as an Indiana county judge for at least five years.¹⁵⁷ Statutory criteria to be considered by the Commission include legal education, legal writings, reputation in the practice of law, physical condition, financial interest, public service activities, and any other pertinent information which the Commission feels is important in selecting the most highly qualified individuals for judicial office.¹⁵⁸ The Indiana Court of Appeals is also a

¹⁵¹Scutt, *supra* note 7. Judge Sue Shields, Hamilton County Superior Court, is described as the highest woman judge in Indiana. See Appendix to identify the few women judges within the ICJS.

¹⁵²IND. CODE § 33-13-9-1 (IND. ANN. STAT. § 4-6905, Burns 1968).

¹⁵³IND. CONST. art. 7, § 4.

¹⁵⁴*Id.*

¹⁵⁵*Id.* art. 7, § 10.

¹⁵⁶*Id.* art. 7, § 11.

¹⁵⁷*Id.* art. 7, § 10.

¹⁵⁸IND. CODE § 33-2.1-4-7 (IND. ANN. STAT. § 4-7807, Burns Supp. 1974) provides that the Commission shall consider the following specific criteria:

- (1) Legal education, including law schools attended and post-law school education, and any other academic honors and awards achieved.
- (2) Legal writings, including but not limited to legislative draftings, legal briefs, and contributions to legal journals and publications.
- (3) Reputation in the practice of law, as evaluated by attorneys

part of the ICJS, since an absolute right of one appeal plus review and revision of sentences is provided in all criminal cases.¹⁵⁹ Constitutional requirements and statutory considerations¹⁶⁰ are the same for the judicial offices of the court of appeals as for the supreme court, with the additional requirement that court of appeals judges reside in the geographic district to which they are appointed.¹⁶¹

These qualifications indicate no express sex discrimination, unless "physical condition" or "any other pertinent information" are interpreted to allow consideration of the candidate's sex. Of course, the experience qualification may well have a discriminatory effect on women since, as mentioned above, comparatively few women have attended law school or accumulated extensive experience as trial lawyers or judges. As with law enforcement agencies,¹⁶² Indiana's judicial system normally assumes entry at a lower level judicial office followed by several years of satisfactory service before "promotion" to the supreme court or the court of appeals. This factor cannot be ignored in its impact upon women candidates.

Indiana's circuit court judgeships are constitutional offices¹⁶³ with criminal jurisdiction.¹⁶⁴ Constitutional qualifications for the office are residence within the circuit and admission to the practice of law in Indiana.¹⁶⁵ Circuit court judges are elected by the voters of the circuit.¹⁶⁶ No other statutory qualifications exist for circuit court judges, again leaving broad discretion with the voters.

and judges with whom the candidate has had professional contact, and the type of legal practice, including experience and reputation as a trial lawyer or trial judge.

(4) Physical condition, including general health, stamina, vigor and age.

(5) Financial interests, including any such interest which might conflict with the performance of judicial responsibilities.

(6) Activities in public service, including writings and speeches concerning public affairs and contemporary problems, and efforts and achievements in improving the administration of justice.

¹⁵⁹IND. CONST. art. 7, § 6.

¹⁶⁰*Id.* art. 7, § 10; IND. CODE § 33-2.1-4-7 (IND. ANN. STAT. § 4-7807, Burns Supp. 1974).

¹⁶¹IND. CONST. art. 7, § 10; IND. CODE § 33-2.1-2-3 (IND. ANN. STAT. § 4-7713, Burns Supp. 1974).

¹⁶²*See* text accompanying notes 75-129 *supra*.

¹⁶³IND. CONST. art. 7, § 1.

¹⁶⁴*Id.* art. 7, § 8; IND. CODE § 33-4-4-3 (IND. ANN. STAT. § 4-303, Burns 1968).

¹⁶⁵IND. CONST. art. 7, § 7.

¹⁶⁶*Id.*; IND. CODE § 3-4-4-1 (Burns Supp. 1974). In Vanderburgh County, elections occur only after a rejection of the incumbent at the primary election. *Id.*

More populous counties in Indiana have superior courts,¹⁶⁷ typically with judges elected by the voters of that county.¹⁶⁸ In the counties of Allen,¹⁶⁹ Lake,¹⁷⁰ Saint Joseph,¹⁷¹ and Vanderburgh,¹⁷² superior court judges are appointed by the governor after nomination by the Judicial Nominating Commission. To be eligible for nomination, a person must be domiciled in the county, be a United States citizen, and be admitted to the practice of law in Indiana.¹⁷³ Eligible persons are evaluated by the Judicial Nominating Commission on statutory criteria similar to those employed in the selection of appellate court judges.¹⁷⁴ Political affiliations are ex-

¹⁶⁷*E.g.*, IND. CODE § 33-5-10-1 (IND. ANN. STAT. § 4-801, Burns 1968) (Clark County Superior Court); *id.* § 33-5-8-1 (IND. ANN. STAT. § 4-601) (Bartholomew County Superior Court).

¹⁶⁸*Id.* § 33-5-8-1 (IND. ANN. STAT. § 4-601) (Bartholomew County); *id.* § 33-5-9-1 (IND. ANN. STAT. § 4-701) (Boone County).

¹⁶⁹IND. CODE §§ 33-5-5.1-30, -39, -41 (IND. ANN. STAT. §§ 4-530, -539, -541, Burns Supp. 1974).

¹⁷⁰*Id.* §§ 33-5-39-28, -39 (IND. ANN. STAT. §§ 4-1928, -1939, Burns Supp. 1974).

¹⁷¹*Id.* §§ 33-5-40-33, -50, -44 (IND. ANN. STAT. §§ 4-2634, -2651, -2645).

¹⁷²*Id.* §§ 33-5-43.5-3, -10, -12, -14 (IND. ANN. STAT. §§ 4-2995, -2995g, -2995i, -2995k).

¹⁷³*Id.* §§ 33-5-5.1-38(a), -29.5-36(a), -40-41(a), -43.5-11(a) (IND. ANN. STAT. §§ 4-538(a), -1936(a), -2642(a), -2995h(a)).

¹⁷⁴*Id.* §§ 33-5-5.1-38(b), -29.5-36(b), -40-41(b), -43.5-11(b) (IND. ANN. STAT. §§ 4-538(b), -1936(b), -2642(b), -2995h(b)) specify the following criteria.

- (1) Law school record, including any academic honors and achievements;
- (2) Contributions to scholarly journals and publications, legislative draftings, and legal briefs;
- (3) Activities in public service, including:
 - (i) writing and speeches concerning public or civic affairs which are on public record, including but not limited to campaign speeches or writing, letters to newspapers, testimony before public agencies;
 - (ii) government service;
 - (iii) efforts and achievements in improving the administration of justice;
 - (iv) other conduct relating to his profession.
- (4) Legal experience, including the number of years of practicing law, the kind of practice involved, and reputation as a trial lawyer or judge;
- (5) Probable judicial temperament;
- (6) Physical condition, including age, stamina, and possible habitual intemperance;
- (7) Personality traits, including the exercise of sound judgment, ability to compromise and conciliate, patience, decisiveness and dedication;
- (8) Membership on boards of directors, financial interest, and any other consideration which might create conflict of interest with a judicial office;

pressly exempted when considering eligible candidates for nomination.¹⁷⁵ Elected superior court judges are subject to the expectations of voters. The nomination and appointment procedure does provide express factors for consideration, none of which are expressly related to the sex of the candidate.

Marion County's Criminal Courts¹⁷⁶ and Hancock County's County Court¹⁷⁷ represent other county courts with criminal jurisdiction. As with most other county court judges, these offices are elective,¹⁷⁸ with no particular qualifications save admission to the practice of law in Indiana.¹⁷⁹ First, second, third, and fourth class cities have city courts¹⁸⁰ with criminal jurisdiction.¹⁸¹ City court judges are elected by voters of the city¹⁸² and typically must have been residents of the county in which the city is located for at least one year preceding the election.¹⁸³ Indianapolis has a municipal court¹⁸⁴ with criminal jurisdiction.¹⁸⁵ Municipal court judges are appointed by the governor after nomination by the Judicial Nominating Commission.¹⁸⁶ An eligible candidate must be admitted to the practice of law in Indiana, be a United States citizen, have been a practicing attorney or judge in Indiana for at least five years, and have been a resident and practicing attorney or judge in Marion County for at least the three years prior to appointment.¹⁸⁷ Of the fifteen municipal court judges, only eight can be affiliated with the same political party.¹⁸⁸

No mention of sex is made in any of the express factors for consideration of candidates. Although not part of the criminal justice system, the Lake and Marion County juvenile court judges may appoint at least three referees, and in the event that such officials are appointed, one shall be a woman¹⁸⁹ in addition to

(9) Any other pertinent information which the commission feels is important in selecting the best qualified individuals for judicial office.

¹⁷⁵*Id.* §§ 33-5-5.1-38(d), -29.5-36(d), -40-41(d), -43.5-11(d) (IND. ANN. STAT. §§ 4-538(d), -1936(d), -2642(d), -2995h(d)).

¹⁷⁶*Id.* § 33-9-1-1 (IND. ANN. STAT. § 4-5701, Burns 1968).

¹⁷⁷*Id.* § 33-5.1-1-1 (IND. ANN. STAT. § 4-6401, Burns Supp. 1974).

¹⁷⁸*Id.* §§ 33-5.5-1-1, -9-9-2 (IND. ANN. STAT. §§ 4-6401, -5725).

¹⁷⁹*Id.* §§ 33-5.5-1-2, -13-9-1 (IND. ANN. STAT. §§ 4-6402, -6905, Burns 1968).

¹⁸⁰*Id.* § 18-1-14-1 (IND. ANN. STAT. § 4-6001).

¹⁸¹*Id.* § 18-1-14-5 (IND. ANN. STAT. § 4-6002).

¹⁸²*Id.*

¹⁸³*E.g., id.* § 33-13-11-1 (IND. ANN. STAT. § 4-6017).

¹⁸⁴*Id.* § 33-6-1-1 (IND. ANN. STAT. § 4-5801, Burns Supp. 1974).

¹⁸⁵*Id.* § 33-6-1-2 (IND. ANN. STAT. § 4-5802).

¹⁸⁶*Id.* § 33-6-1-12 (IND. ANN. STAT. § 4-5814).

¹⁸⁷*Id.* § 33-6-1-30 (IND. ANN. STAT. § 4-5814(a)).

¹⁸⁰*Id.*

¹⁸⁹*Id.* § 33-12-2-17 (IND. ANN. STAT. § 9-3116).

being a United States citizen and a practicing attorney for a period of three years.¹⁹⁰ However, the sex of a candidate for judge of a court with criminal jurisdiction is not an express factor to be found within the laws of Indiana.

C. Correction Officials

The qualifications for executive, managerial, and professional positions within the ICJS corrections subsystem are much more explicit and detailed than for similar positions in other ICJS subsystems. The Indiana Department of Correction¹⁹¹ controls most of this correctional subsystem in the typical modes of probation, parole, and institutionalization. High educational achievement and several years of experience are typically required for upper level positions. Consideration turns first to the various managerial and executive positions within the Department of Correction, then to the officers of the various correctional institutions, and finally to probation and parole officers.

1. Department of Correction Officials

The Board of Correction¹⁹² determines department policy¹⁹³ and is composed of seven members, including a practicing attorney, a social worker or sociologist, an educator, a psychologist or psychiatrist, someone familiar with the problems of juveniles, and two lay members.¹⁹⁴ Board members are appointed by the governor,¹⁹⁵ may not be officials of the state in any other capacity, and must be "qualified for their position by demonstrated interest in and knowledge of correctional treatment."¹⁹⁶ No more than four out of seven of the board members may belong to the same political party.¹⁹⁷

The Commissioner of the Department of Correction is its executive and administrative head.¹⁹⁸ Appointed by the governor,¹⁹⁹ the Commissioner must meet combined requirements of education and managerial and correctional experience²⁰⁰ which are

¹⁹⁰*Id.*

¹⁹¹*Id.* §§ 11-1-1.1-1, -3 (Burns 1973).

¹⁹²*Id.* § 11-1-1.1-4.

¹⁹³*Id.* § 11-1-1.1-7.

¹⁹⁴*Id.* § 11-1-1.1-6.

¹⁹⁵*Id.* § 11-1-1.1-5.

¹⁹⁶*Id.* § 11-1-1.1-4.

¹⁹⁷*Id.* § 11-1-1.1-5.

¹⁹⁸*Id.* § 11-1-1.1-9.

¹⁹⁹*Id.* § 11-1-1.1-11.

²⁰⁰*Id.* § 11-1-1.1-12 provides that the Superintendent must meet the following specific criteria.

common to most of the executive and managerial positions within Indiana's Department of Correction.

The Executive Officer of the Department is chosen by the Commissioner subject to the approval of the Board of Correction.²⁰¹ Also chosen in this way are the Executive Director of Adult Authority, who has direct supervision of the heads of adult correctional institutions,²⁰² and the Executive Director of Youth Authority who has direct supervision of the heads of juvenile or youthful offender institutions.²⁰³ To be eligible for these positions candidates must (1) "have . . . graduated with a bachelor's degree from an accredited college or university, and preferably be the recipient of an earned graduate degree" and (2) "have had eight years full-time paid experience in a correctional system, [at least five of which] must have been in a responsible supervisory or administrative capacity."²⁰⁴ Graduate training in any behavioral science, administration, or other field appropriate to correctional work may be substituted on a year-for-year basis for general experience, not to exceed two years.²⁰⁵ The Department's Division of Probation exercises general supervision over the administration of probation in all Indiana courts and is headed by a Director.²⁰⁶ The Director is employed by the Commissioner with the Board's approval, is directly responsible to the Director of Adult Authority, and must possess the same qualifications as the executive directors, except that only three years of supervisory or administrative experience are required.²⁰⁷ The Director of the Department's Division of Classification and Treatment,²⁰⁸ employed by the Commissioner and approved by the Board, must be "qualified by training and experience to organize and direct

(1) He shall have been graduated with a bachelor's degree from an accredited college or university and preferably be the recipient of an earned graduate degree;

(2) He shall have had responsible administrative or supervisory experience in a correctional system for a minimum of five (5) years;

(3) He shall have had ten (10) years full-time paid experience in correctional institutional work, parole, probation or social work;

(4) Graduate training in any behavioral science, administration or other fields appropriate to correctional administration work may be substituted on a year-for-year basis for general experience not to exceed three (3) years.

²⁰¹*Id.* § 11-1-1.1-15.

²⁰²*Id.* § 11-1-1.1-16.

²⁰³*Id.* § 11-1-1.1-17.

²⁰⁴*Id.* § 11-1-1.1-49.

²⁰⁵*Id.*

²⁰⁶*Id.* § 11-1-1.1-18.

²⁰⁷*Id.* § 11-1-1.1-19. For further discussion of probation positions see text accompanying note 275 *infra*.

²⁰⁸IND. CODE § 11-1-1.1-24 (Burns 1973).

programs of classification, general and vocational education and other programs of treatment and training designed to promote the rehabilitation of offenders."²⁰⁹ Other specific qualifications for this directorship are provided by statute.²¹⁰

The qualifications for the Director of Industries and Farms,²¹¹ also chosen by the Commissioner with Board approval, are tailored to the unique duties of the position.²¹² The Division of Medical Care and Treatment must be headed by a licensed physician "qualified by training and experience to supervise and direct the medical care and treatment of the inmates."²¹³ This division director must also be appointed by the Commissioner and approved by the Board of Correction.²¹⁴ The Director of the Division of Research and Statistics must be "qualified to organize and direct a staff of professional, technical, and clerical personnel engaged in collecting, recording, analyzing, interpreting, and presenting statistical and research data."²¹⁵ Additional specific qualifications for this directorship, reflecting the unique duties of the position,

²⁰⁹*Id.* § 11-1-1.1-25.

²¹⁰*Id.* The statute provides that:

(1) He shall have been graduated with a bachelor's degree in any behavioral science from an accredited college or university and preferably be the recipient of an earned graduate degree;

(2) He shall have had eight (8) years full-time paid experience in correctional institutional work, parole, probation, social work, or related fields;

(3) Five (5) of these years shall have been full-time paid work in a correctional system, three (3) of which shall have been in a responsible supervisory or administrative capacity. Graduate training in education or any behavioral science may be substituted on a year-for-year basis for general experience, not to exceed three (3) years.

Note the specific requirement for behavioral science education and the more liberal policy in substituting graduate education for general experience.

²¹¹*Id.* § 11-1-1.1-36.

²¹²*Id.* § 11-1-1.1-37 provides:

(1) He shall have been graduated with a bachelor's degree in business administration, accounting, industrial management or a suitable equivalent, and preferably be the recipient of an earned graduate degree;

(2) He shall have had six (6) years full-time paid experience in industrial sales or production, three (3) years of which shall have been in a responsible administrative or supervisory capacity.

Note the fixed requirement for work experience without provision for substitution of graduate education.

²¹³*Id.* § 11-1-1.1-30.5.

²¹⁴*Id.*

²¹⁵*Id.* § 11-1-1.1-33.

are statutory.²¹⁶ The Director of the Division of Administrative Services²¹⁷ is employed by the Commissioner with approval by the Board. Qualifications for this position are also set by statute.²¹⁸

The last division with duties relevant to the Indiana Criminal Justice System is the Adult Parole Division within the Adult Authority.²¹⁹ The Supervisor of the Adult Parole Division is directly responsible to the Executive Director of the Adult Authority.²²⁰ The Supervisor of the Adult Parole Division, as well as the Director of Work Release,²²¹ must meet the same general qualifications as the executive directors of the Adult Authority and the Juvenile Authority.²²²

2. Institutional Officers

The Indiana Youth Center, a medium-security institution for first offender male felons between the ages of fifteen and twenty-

216

(1) He shall have been graduated with a master's degree from an accredited college or university and preferably be the recipient of an earned doctor's degree;

(2) He shall have had five (5) years of research or statistical related work experience;

(3) His academic and experimental background should suggest an extensive knowledge of theory and methods of statistical research and analyses, sources of potential data and methods of presentation, as well as a demonstrated ability to design and conduct basic research. Graduate training in any behavioral science, administration, or statistics may be substituted on a year-for-year basis for the required work experience, not to exceed two (2) years.

Id.

²¹⁷*Id.* § 11-1-1.1-34.

²¹⁸*Id.* § 11-1-1.1-35.

(1) He shall have been graduated with a bachelor's degree in business administration, accounting, or a suitable equivalent, from an accredited college or university and preferably be the recipient of an earned graduate degree;

(2) He shall have had eight (8) years of full-time paid experience above the clerical level in a public or private agency or business organization in accounting, budgeting, auditing, purchasing, institutional administration, or personnel management. Three (3) of these eight (8) years shall have been in a responsible administrative or supervisory capacity.

(3) Graduate training in business or a related area may be substituted on a year-for-year basis for general experience not to exceed three (3) years.

²¹⁹*Id.* § 11-1-1.1-54.

²²⁰*Id.*

²²¹*Id.* § 11-1-1.1-47.

²²²*Id.* § 11-1-1.1-49. For further discussion of parole positions, see text accompanying note 281 *infra*.

five,²²³ except those sentenced to death or life imprisonment,²²⁴ is a part of the ICJS correctional subsystem. The Superintendent of the Center is employed by the Commissioner with approval by the Board, subject to the statutory mandate that such employment be on the basis of merit only and "without regard to race, sex, color, creed, place of national origin, or political affiliation."²²⁵ Express qualifications for the position are the same as those for the executive directors.²²⁶

The Reception and Diagnostic Center,²²⁷ which is part of the Indiana Youth Center, processes various classes of felons and recommends the most appropriate correctional institution and the type of program of correction and training for each offender.²²⁸ The Center is administered by a director who is appointed by the Board of Correction and who must have been trained in and have had experience in the field of penology and correction, including at least three years of satisfactory administrative experience in such field.²²⁹ The Center's Classification Board evaluates the diagnostic report and then recommends the institution and program to the Board of Correction which makes the final decision.²³⁰ Members of the Classification Board are selected by the Board of Correction²³¹ with no specific qualifications expressed in the statutes.

The Youth Rehabilitation Facility²³² operates conservation work camps²³³ on state property²³⁴ with custody of males not over twenty-five years of age²³⁵ transferred to the facility by the Board of Correction from another institution.²³⁶ The Director of the Youth Rehabilitation Facility is appointed by the Board.²³⁷ He must have the same qualifications as the executive directors.²³⁸ The Rockville Training Center is a minimum security institu-

²²³IND. CODE §§ 11-1-2-9, -3-6-1 (Burns 1973).

²²⁴*Id.* § 11-3-6-1.

²²⁵*Id.* § 11-1-1.1-48.

²²⁶*Id.* § 11-1-1.1-49.

²²⁷*Id.* § 11-3-6-5.

²²⁸*Id.* § 11-3-6-10.

²²⁹*Id.* § 11-3-6-5. The statute also provides that the director have graduated from an accredited college or university and during his college or university training have majored in the field of education or social sciences.

²³⁰*Id.* § 11-3-6-10.

²³¹*Id.*

²³²*Id.* § 11-3-5-1.

²³³*Id.* § 11-3-5-2.

²³⁴*Id.* § 11-3-5-4.

²³⁵*Id.* § 11-3-5-2.

²³⁶*Id.* § 11-3-5-6.

²³⁷*Id.* § 11-3-5-3.

²³⁸*Id.* § 11-1-1.1-49.

tion²³⁹ for males fifteen to twenty-five years old who have not previously been convicted of a felony, except those sentenced to life imprisonment or death.²⁴⁰ The Superintendent of the Rockville Training Center is appointed by the Commissioner of the Department of Correction with the recommendation of the Indiana Youth Authority's Advisory Council.²⁴¹ By statute the Superintendent must be a graduate of an accredited college or university and have had six years of experience in correctional institutional work, parole, probation or social work, four of which shall have been in a correctional system. Of the latter four years, three must have been in a responsible supervisory or administrative position in a correctional institution.²⁴²

The Department of Correction may establish and operate community correctional centers as part of the state correctional system.²⁴³ Superintendents of such centers are appointed by the Commissioner with approval of the Board.²⁴⁴ As with all superintendents of the various other correctional institutions, employment is on the basis of merit without regard to race, sex, color, creed, place of national origin, or political affiliation.²⁴⁵ Educational and experience qualifications are the same as those for the executive directors.²⁴⁶

The ICJS has four other correctional institutions for boys and male adults. The Indiana State Prison incarcerates males convicted of treason or murder in the first or second degree, all convicted male felons thirty years of age or older, and all males transferred thereto.²⁴⁷ The warden of the prison is employed by the Commissioner, with approval by the Board of Correction,²⁴⁸ on the basis of merit only and without regard to race, sex, color, creed, place of national origin, or political affiliation.²⁴⁹ The Indiana Reformatory incarcerates males between the ages of sixteen and twenty-nine who are convicted of felonies other than treason or murder in the first or second degree.²⁵⁰ The Indiana

²³⁹*Id.* § 11-3-7-2.

²⁴⁰*Id.* §§ 11-1-2-9, -3-7-1.

²⁴¹*Id.* §§ 11-1-2-11, -1-2-12, -3-7-3.

²⁴²*Id.* § 11-3-7-3. The statute provides that graduate training in any behavioral science, administrative or other field, appropriate to correctional work, may be substituted on a year-for-year basis, not to exceed two (2) years.

²⁴³*Id.* § 11-1-5-1.

²⁴⁴*Id.* § 11-1-5-4.

²⁴⁵*Id.* § 11-1-1.1-48.

²⁴⁶*Id.* § 11-1-1.1-49.

²⁴⁷*Id.* § 11-2-3-2.

²⁴⁸*Id.* § 11-1-1.1-47.

²⁴⁹*Id.* § 11-1-1.1-48.

²⁵⁰*Id.* § 11-2-3-1.

State Farm²⁵¹ is charged with custody of males over eighteen years of age.²⁵² The Indiana Boys School²⁵³ accepts commitment of boys between twelve and eighteen years of age²⁵⁴ and confines them until they reach the age of twenty-one unless released sooner.²⁵⁵ The qualifications for the Warden of the State Prison and the superintendents of the three latter institutions are the same as those for the executive directors.²⁵⁶

Two correctional facilities for girls and women exist in Indiana, the Indiana Women's Prison,²⁵⁷ which incarcerates women over eighteen²⁵⁸ who are convicted of criminal offenses and sentenced to imprisonment,²⁵⁹ and the Indiana Girls School,²⁶⁰ which accepts commitment of girls between twelve and eighteen years of age and confines them until they reach the age of twenty unless released sooner.²⁶¹ The qualifications for the superintendents of both institutions are the same as for the executive directors.²⁶² Counties may certify homes for friendless women,²⁶³ but no statutory mention is made of qualifications of supervisors.

Additionally each county in Indiana is required to maintain a county prison or jail²⁶⁴ under the direction of a county sheriff.²⁶⁵ The grand jury, at each term of the circuit court, inspects the county jail and reports complaints or recommendations to the county's board of commissioners.²⁶⁶ The Indiana Department of Correction formulates and prescribes rules and regulations for county jails to be adopted and enforced by the circuit court.²⁶⁷ Counties may also establish and maintain a county workhouse.²⁶⁸ If established, the workhouse is to be managed by a superintendent, who must be "some proper person" employed by the county board of commissioners.²⁶⁹

²⁵¹*Id.*

²⁵²*Id.* §§ 11-2-5-4, -3-1-2.

²⁵³*Id.* §§ 11-3-1-1, -3-1.

²⁵⁴*Id.* §§ 11-3-1-2, -1-3, -1-4, -2-3.

²⁵⁵*Id.* §§ 11-3-1-8, -2-8, -4-2.

²⁵⁶*Id.* §§ 11-1-1.1-48, -49.

²⁵⁷*Id.* § 11-4-1-1.

²⁵⁸*Id.* §§ 11-4-5-1, -4-7-3.

²⁵⁹*Id.* § 11-7-3-2.

²⁶⁰*Id.* § 11-4-1-1.

²⁶¹*Id.* § 11-4-5-1.

²⁶²*Id.* §§ 11-1-1.1-48, -49.

²⁶³*Id.* § 11-4-8-1.

²⁶⁴*Id.* § 11-5-1-1.

²⁶⁵*Id.* § 11-5-1-3. The qualifications for sheriff are discussed in the text accompanying note 93 *supra*.

²⁶⁶IND. CODE § 11-5-1-2 (Burns 1973).

²⁶⁷*Id.* § 11-5-3-2.

²⁶⁸*Id.* § 11-6-1-1.

²⁶⁹*Id.* § 11-6-1-2.

Qualifications for police matrons have been earlier mentioned but the position is more properly placed in the correctional sub-system. The prison matron is appointed by the county sheriff²⁷⁰ and must be "at least twenty-one years of age, able bodied, fully qualified and of good moral character."²⁷¹ Although no direct qualification of female sex can be found in the statutes, the repeated use of pronouns "her" and "she,"²⁷² the term "matron," and the comparison of prison matrons to women officials in other institutions²⁷³ indicate that the legislature assumed that the prison matron would be a woman. Indeed if the county has no police matron, it must still employ a person

to receive, take charge of, search, and properly care for, at the county jail, city prison or other detention centers within the county, all female prisoners and all children under the age of fourteen (14) years, who have been arrested and detained in the county jail, city prison, or other detention centers.²⁷⁴

3. Probation and Parole Officers

Probation officers are appointed by and serve under the judges of circuit courts, criminal courts, city courts, and municipal courts.²⁷⁵ The Division of Probation of the Department of Correction prescribes minimum standards for the operation of probation practices, selection of probation personnel, and establishment of salary levels.²⁷⁶ More precisely, a probation practices and standards committee²⁷⁷ prepares minimum qualifications for entering probation work.²⁷⁸ Members of the committee are appointed by the Director of the Division of Probation and the committee must consist of two judges with juvenile jurisdiction, one chief probation officer with administrative responsibility for an adult probation department, one chief probation officer with administrative responsibility for a juvenile probation department, and one probation officer from an adult probation department.²⁷⁹ To be eligible for appointment as probation officers, candidates

²⁷⁰*Id.* § 11-5-4-6.

²⁷¹*Id.* § 11-5-4-5.

²⁷²*Id.* §§ 11-5-4-1 to -6.

²⁷³*Id.* § 11-5-4-7.

²⁷⁴*Id.* § 11-5-4-1.

²⁷⁵*E.g., id.* §§ 35-7-2-3, -2-6, -3-1 (IND. ANN. STAT. §§ 9-2212, Burns Supp. 1974, -2214a, Burns 1956, -2214b, Burns Supp. 1974); Noble County Council v. Fifer, 234 Ind. 172, 125 N.E.2d 709 (1955).

²⁷⁶IND. CODE § 35-7-5.1-5 (IND. ANN. STAT. § 9-2919, Burns Supp. 1974).

²⁷⁷*Id.* § 35-7-5.1-6 (IND. ANN. STAT. § 9-2920).

²⁷⁸*Id.* § 35-7-5.1-7 (IND. ANN. STAT. § 9-2921).

²⁷⁹*Id.* § 35-7-5.1-6 (IND. ANN. STAT. § 29-2920).

must meet the minimum qualifications established by the probation practices and standards committee and successfully complete a competitive examination conducted by the Division of Probation.²⁸⁰

The Adult Parole Division maintains a staff of parole officers for parolees from adult institutions, employed "only on the basis of merit."²⁸¹ Thus, parole agents work for the Indiana Department of Correction and are employed through the merit system for state employees. These probation and parole positions are particularly important since they may serve as entry level jobs for women seeking employment in corrections. It should be noted that these positions do have a substantial number of women as compared to other ICJS positions.²⁸²

IV. DISCRIMINATION IN ICJS EMPLOYMENT

With the preceding exposition of statutory qualifications for various ICJS executive, managerial, and professional positions as a foundation, this section now examines those qualifications for implicit discriminatory effect. While it appears that none of these statutes expressly prohibit or hinder women from serving in those positions, some of the requirements may implicitly discriminate against women. Furthermore, implicit employment discrimination against women in a subtle, personal mode may be discerned. In sum, the authors believe that women have been discriminated against in the employment of ICJS executives, managers, and professionals—not formally through statutory qualifications but rather by subtle and informal beliefs and judgments. This section will describe a few of the ways in which this discrimination may occur.

In applying federal and state employment statutes to specific positions in the ICJS, it is apparent that almost all of the positions in this study are covered by each of the laws. At the law enforcement level all line officers are covered except elected sheriffs who are exempt.²⁸³ While it might be argued that the chief of police could be included under the relatively recent "policy

²⁸⁰*Id.* § 11-1-1.1-20 (Burns 1973).

²⁸¹*Id.* § 11-1-1.1-56.

²⁸²*See* Appendix.

²⁸³*See* note 54 *supra*. However, neither Executive Order 11,246 nor the Indiana Civil Rights Law specifically exempts elected officials or their staff. While the employer of an elected official may be the electorate, which is not mandated to avoid discrimination, the personal staff of such as elected official would seem to be covered. Thus the distinction drawn in this section would be applicable only if Title VII was the sole law relevant to a particular case. Since Title VII is the most pervasive and well-known, most of our comments will be directed toward its coverage, language, and judicial interpretation.

maker" exemption of Title VII,²⁸⁴ the exemption is, by its language, directed toward members of a politician's personal staff and should not be read to include the chief of police. In the court officials section of the ICJS the county prosecuting attorney is exempt from Title VII since the office is elective; however, problems arise as to the status of the position of deputy prosecuting attorney. On the one hand, a deputy could arguably be considered "an appointee on the policy making level" with respect to important decisions about tactics or decisions as to whether to prosecute various kinds of cases. On the other hand, to accept such an argument in this instance could lead to an unwarranted enlargement of the exemption since almost all employees must make decisions which ultimately affect his or her employer's policies. The exemption should be narrowly construed. For example, in counties with rather large staffs in the prosecutor's office, the chief deputy may be directly involved with policy decisions and thus be exempt; however, other deputies with lesser responsibilities would not come within the exemption. At the state level, a similar analysis could be made with respect to the Attorney General's staff. Obviously, there is nothing to prevent the state, county, prosecuting attorney, or Attorney General from pursuing an equal opportunity program; the question is whether or not it is mandatory.

ICJS judges are both appointed and elected. While elected judges are exempt, appointed judges are not and are therefore "employees" under Title VII. Likewise, the public defender and staff are included in the coverage of Title VII. The catch-all category of practicing attorneys is covered at three levels: the law schools' responsibilities, the state bar's testing and admissions programs, and law firms' employment and promotion practices.

Finally, the positions in the corrections field discussed in this Article are all covered by the equal opportunity laws. As with line officers in law enforcement, equal employment opportunity for these positions is crucial since promotion to top executive and administrative jobs is dependent upon experience at lower levels.²⁸⁵

Given the applicability of equal opportunity laws to most positions in the ICJS, the relevant case law should be of interest to those charged with employment decisions. Although there are very few cases which raise direct questions about employment of

²⁸⁴Fair Labor Standards Amendments of 1974, Act of April 8, 1974, Pub. L. No. 93-259, § 6(a) (2), U.S. Code Cong. & Adm. News 619 (1974), *amending* 29 U.S.C. §§ 201-19 (1970).

²⁸⁵*See* text accompanying note 124 *supra*.

women in criminal justice positions,²⁸⁶ there are several which are applicable to women and employment in any field. Often these cases deal with the issues of seemingly neutral standards, except in cases of explicitly separate job lines. The concept of unlawful discrimination implicit in neutral standards is crucial to understanding employment in the ICJS, since the exclusion of women is not by formal or overt decisions.

One neutral standards issue involves the legality of height and weight requirements imposed for law enforcement officers and sometimes informally for persons at correction institutions.²⁸⁷ Although height and weight requirements are neutral on their faces and do not explicitly exclude women, the effect of such requirements may have a discriminatory impact which also violates equal employment opportunity policy. For example, if a law enforcement agency has a height requirement of 5 feet 9 inches for

²⁸⁶In addition to cases discussed here, several cases have been filed alleging general sex discrimination. The Suffolk County Police Department has been charged by the National Organization for Women with discrimination in recruiting, testing, hiring, and promotion and in terms, conditions and privileges of employment. SPOKESWOMAN, Mar. 15, 1964, at 3. The Justice Department has filed suit against the Chicago and Buffalo, N.Y., municipal police departments, alleging discrimination against women in employment opportunities and conditions of employment. LEAA Newsletter, November 1973, at 24.

In *City of Philadelphia v. Pennsylvania Human Relations Comm'n*, 4 Pa. Commw. 506, 287 A.2d 703 (1972), a trial court decision for the woman plaintiff who had been denied the opportunity to apply for a job with the park police was reversed. The court ruled she must first apply to be a regular police officer and hinted separate job lines—policewoman-policeman—would be subject to challenge. Apparently park patrol was considered to be a *police-man's* job.

In *Wood v. Mills*, 6 Fair Empl. Prac. Cas. 1347 (S.D.W. Va. 1973), the court upheld an "equal pay" complaint by a woman deputy sheriff (jail matron) who was paid less than a male jailor. An injunction against further differentiation issued but the court denied any back pay award.

There are also a few cases involving procedural issues. *Wright v. Nichols*, 7 Fair Empl. Prac. Cas. 196 (E.D. Mich. 1973) (class action, section 1983 challenge survived motion to dismiss even though named plaintiff resigned); *O'Brien v. Shrimp*, 356 F. Supp. 1259 (N.D. Ill. 1973) (section 1983 cause of action stated when sheriff refused to consider women for position of deputy sheriff).

²⁸⁷Although not found in Indiana statutes, height and weight requirements are commonly used by ICJS law enforcement components. See e.g., *Bloomington Daily Herald-Telephone*, June 20, 1973, at 2, col. 1 (emphasis added):

The Indiana State Police have announced that applications are now being accepted from *men* who want to become troopers. . . . Applicants must be U.S. citizens, age 21 to 34, height 5 feet 9 inches to 6 feet 5 inches

See note 81 *supra*.

all police officers, the fact that promotions are always from within, coupled with the fact that approximately ninety-five percent of the female population falls below 5 feet 9 inches,²⁸⁸ means that women are effectively excluded from pursuing careers in law enforcement. That a height standard is neutral on its face is irrelevant to equal opportunity laws since its effect is exclusion and discrimination.

One of the Supreme Court's first Title VII cases, *Griggs v. Duke Power Co.*,²⁸⁹ involved the legality of seemingly neutral job requirements. The plaintiff in *Griggs* alleged that the employer violated Title VII by requiring a high school diploma and a satisfactory intelligence test score for certain jobs. In reversing the lower court, which had found no impermissible discrimination, the Supreme Court held that both the diploma and test score standards violated Title VII since neither was shown to be significantly job related. The Court rested its decision upon a finding that both requirements operated to disqualify Negroes at a substantially higher rate than white applicants. Thus the *Griggs* test provides that once a plaintiff has established that a pre-employment standard has a "disparate effect" on a Title VII protected group, the burden of proof shifts to the defendant employer to show that the standard is job related. In order for the employer to satisfy the job related standard, he or she must prove that the requirement substantially increases the likelihood of success on the particular job. Obviously, in order to predict the chances of success on a job, one must know what the job requires, how success is to be measured, and what qualities are needed for successful job performance. This proof must be specific and not based on general allegations of the test's ability to improve the overall quality of the work force²⁹⁰ or upon general notions of stereotyped abilities or characteristics.²⁹¹ Correspondingly, the issue in height and weight requirement cases is whether or not

²⁸⁸Note, *Height Standards in Police Employment and the Question of Sex Discrimination: The Availability of Two Defenses for a Neutral Employment Policy Found Discriminatory Under Title VII*, 47 S. CAL. L. REV. 585, 588 n.13 (1974) [hereinafter cited as *Height Standards*]; *Smith v. City of East Cleveland*, 363 F. Supp. 1131, 1136 (N.D. Ohio 1973).

²⁸⁹401 U.S. 424 (1971).

²⁹⁰*Id.* at 431.

²⁹¹*See Smith v. City of East Cleveland*, 363 F. Supp. 1131, 1137 (N.D. Ohio 1973); 29 C.F.R. § 1604.2 (1973); *Height Standards*, *supra* note 288, at 603-05.

they are job related.²⁹² This question was directly faced in *Smith v. City of East Cleveland*.²⁹³

Smith involved a black woman plaintiff who brought a class action suit under 42 U.S.C. § 1983²⁹⁴ challenging various aspects of police hiring including a height and weight minimum of 5 feet 8 inches and 150 pounds. After considering evidence for fifteen days, the court carefully detailed its conclusion that the skills, defined in relation to the police function, were not positively related to the height and weight requirements presently imposed but rather were based solely on the stereotype of the large male police officer.²⁹⁵ The defendants argued that the most physically taxing and dangerous of the police duties, the felony related functions, required physical strength, fitness, and agility, long reach of the arms, as well as the abilities to view crowds, drive a car, absorb blows, and impress others with physical prowess.²⁹⁶ The court carefully analyzed each function as it related to the height and weight minimums and perceived no relationship. For example, the court found that in most cases the kind of physical strength required of a police officer was leverage strength—the use of body mass at a particular angle in order to lift or direct—rather than brute strength—from mass alone. Since leverage strength, which is the preferred method of exercising force as a police officer,²⁹⁷ has little to do with height and weight but depends rather on conditioning and fitness,²⁹⁸ the requirements were found discriminatory because they failed to meet the job related test.

²⁹²There have been occasional lapses of proof on the plaintiff's side in neglecting specific allegations and illustrations of the disparate effect. See *Castro v. Beecher*, 459 F.2d 725 (1st Cir. 1972). However, the statistics are available. Secondly, there are evidentiary problems involving statistical methods to determine what percentage of exclusion violates Title VII. For a thorough analysis see *Height Standards*, *supra* note 288, at 596-602.

²⁹³363 F. Supp. 1131 (N.D. Ohio 1973).

²⁹⁴Alleging violation of her fourteenth amendment rights, the plaintiff did not use Title VII. The court's standard of review was basically constitutional, inquiring as to whether the requirements of height and weight were rationally related to a valid state interest under the recent holdings of *Frontiero v. Richardson*, 411 U.S. 677 (1973), and *Reed v. Reed*, 404 U.S. 71 (1971), which the court found in this case to mean that the 5 foot 8 inch and 150 pound minimums must be demonstrably related to job performance. 363 F. Supp. at 1136-38.

²⁹⁵363 F. Supp. at 1138.

²⁹⁶*Id.* at 1141.

²⁹⁷*Id.* at 1139. Brute force is more likely to result in injury to the officer and the person restrained.

²⁹⁸*Id.* at 1138-39. In fact where there is a relationship between height and leverage strength it is negative, that is, the taller person is at a disadvantage because of less effective leverage.

Another example of the court's inquiry was its evaluation of the police department's most crucial argument: the unmeasurable advantage of height in its ability to impress others. The police department considered the advantage of its requirement to be the psychological impact of having all officers over 5 feet 8 inches. The department theorized that if an officer were taller than the person being controlled or arrested, the shorter person would be deterred from assaulting the officer by his or her apparent physical superiority. According to the court the facts offered by the department did not substantiate these claims and in fact indicated size was no deterrence.²⁹⁹ Although *Smith* is not the only case³⁰⁰ which deals directly with height and weight requirements for law enforcement officials, it closely follows the reasoning and standards of proof these issues raise in other areas.³⁰¹ Because of its careful analysis, *Smith* deserves special attention.

Another issue which often arises in employment discrimination cases which are applicable to women in the ICJS involves pregnancy and maternity leaves. Discrimination on the basis of pregnancy or childbearing is clearly discrimination based on sex since only women can become pregnant and bear children.³⁰² Al-

²⁹⁹*Id.* at 1140.

³⁰⁰*Contra*, *Hardy v. Stumpf*, 4 Fair Empl. Prac. Cas. 1078 (Cal. Sup. Ct. Alameda County 1972), in which the court held all requirements, including height and weight, were not unreasonable and were directly and reasonably connected and necessary to the normal performance of duties of police patrolmen. However, the invaluable detail and analysis of *Smith* is not evidenced in *Hardy*. Therefore, the authors believe *Hardy* is subject to attack for failure to review stereotyped rationalization for classifications based on sex. Apparently the police force in *Hardy* was segregated. See text accompanying note 327 *infra*.

³⁰¹See EEOC Decision No. 74-25, Sept. 10, 1973, in 2 CCH EMPL. PRAC. GUIDE ¶ 6400 (municipal fire department's 5 foot 7 inch minimum held illegal under Title VII); *Dominquez v. Board of Fire & Police Comm'rs*, in 2 CCH EMPL. PRAC. GUIDE ¶ 5199 (1973) (Illinois Fair Employment Practice Commission held police department's 5 foot 8 inch height minimum illegal under state act); Pa. Att'y Gen. Op. No. 57, in 2 CCH EMPL. PRAC. GUIDE ¶ 5177 (1973) (state police 5 foot 6 inch minimum suspended until demonstrated to be job related); *Moore v. City of Des Moines Police Dep't*, in 2 CCH EMPL. PRAC. GUIDE ¶ 5184 (July 11, 1973) (Iowa Civil Rights Commission held police department's 5 foot 9 inch height minimum illegal under state act); EEOC Decision No. 72-0284, Aug. 9, 1971, in CCH EEOC Decisions ¶ 6304 (1973) (5 foot 6 inch minimum for airline flight purser violated Title VII); EEOC Decision No. 71-2643, June 25, 1971, in CCH EEOC Decisions ¶ 6286 (1973) (employer's 5 foot 7 inch minimum violated Title VII); EEOC Decision No. 71-1529, April 2, 1971, in CCH EEOC Decisions ¶ 6231 (1973) (employer's 5 foot 7 inch minimum violated Title VII); EEOC Decision No. 71-1418, Mar. 17, 1971, in CCH EEOC Decisions ¶ 6223 (1973) (5 foot 5 inch factory worker requirement invalid).

³⁰²See *LaFleur v. Cleveland Bd. of Educ.*, 465 F.2d 1184 (6th Cir. 1972), *aff'd*, 414 U.S. 632 (1974); *Hutchison v. Lake Oswego School Dist. No. 7*,

though the specific employment requirements in the ICJS do not deal with pregnancy or leaves, the question of how to deal with pregnant women workers is invariably raised in a discussion of the general characteristics and problems of women workers. In fact, it often appears that this one distinctive biological feature of women is uppermost in employers' minds. Given traditional attitudes about women and "their proper place" it is not surprising that once a woman becomes pregnant the conflict between home and work is resolved by the *employer* in favor of the former. What is surprising is that women are often penalized or considered unqualified because they *might* become pregnant.³⁰³ For example, it is not inconceivable that an employer would argue that a woman does not fulfill the "general physical fitness" requirement of some criminal justice positions³⁰⁴ since she may become pregnant. However, to deny a woman a job on this basis is clearly unacceptable and illegal unless the employer also denies jobs to men who *may* become temporarily disabled.³⁰⁵

In 1972 the Equal Employment Opportunity Commission issued new guidelines which deal with fringe benefits as well as pregnancy and childbirth.³⁰⁶ The provisions state that a refusal

Civil No. 73-339 (D. Ore., Apr. 25, 1974). *Contra*, *Cohen v. Chesterfield County Bd. of Educ.*, 474 F.2d 395 (4th Cir. 1973) (en banc), *rev'd*, 414 U.S. 632 (1974). *But see* *Geduldig v. Aiello*, 94 S. Ct. 2485 (1974).

³⁰³T. HAYDEN, *PUNISHING PREGNANCY: DISCRIMINATION IN EDUCATION, EMPLOYMENT, AND CREDIT 1* (ACLU Reports 1973), a comprehensive pre-*LaFleur* case study of pregnancy and employment policies.

³⁰⁴*See* text accompanying notes 125 (police officers), 153 (candidates for supreme court and court of appeals), and 174 (candidates for superior court judge) *supra*.

³⁰⁵Of course, the problem is even more crucial when a woman applicant or candidate is already pregnant. Most employers refuse to consider such an applicant; the question is whether or not the employer also never considers men with present, temporary disabilities, such as a hernia. *See* T. HAYDEN, *supra* note 303, at 58.

³⁰⁶29 C.F.R. § 1604.10 (1973) provides:

(a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is in prima facie violation of title VII.

(b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

to hire an applicant because of pregnancy violates Title VII and may be justified only under the bona fide occupational qualification exception. They further provide that pregnancy is to be treated as any other temporary disability is treated by the employer and thus in most cases a paid leave of limited but adequate duration must be available.³⁰⁷ The authors suggest that discussion concerning whether pregnancy is properly defined as an illness, whether it is voluntary, or whether a pregnant worker will defraud her employer is irrelevant and useless. If an employer has a policy which covers its employees' temporary physical conditions, such a policy should be extended to the physical condition of pregnancy. Although these guidelines have not, as yet, been subject to Supreme Court challenge,³⁰⁸ they were recognized in the latest relevant Court case.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

Id. § 1604.9 provides in part:

(a) "Fringe benefits," as used herein, includes medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave, and other terms, conditions, and privileges of employment.

(b) It shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits.

. . .

(d) It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees. An example of such an unlawful employment practice is a situation in which wives of male employees receive maternity benefits while female employees receive no benefits.

(e) It shall not be a defense under title VII to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.

³⁰⁷See, e.g., *Hutchison v. Lake Oswego School Dist. No. 7*, Civil No. 73-339 (D. Ore., Apr. 25, 1974); T. HAYDEN, *supra* note 303, at 58. One woman police officer is suing the Chicago Police Department for back pay withheld during her pregnancy. *Bloomington Daily Herald-Telephone*, Jan. 10, 1974, at 5, col. 1.

³⁰⁸There have been lower court challenges in which the guidelines were upheld and applied. See *Wetzel v. Liberty Mut. Ins. Co.*, 372 F. Supp. 1146 (W.D. Pa. 1974).

In *Cleveland Board of Education v. LaFleur*,³⁰⁹ the Court struck down mandatory maternity leave policies for public school teachers in two school districts as violative of the teachers' fourteenth amendment due process rights.³¹⁰ Although the nature of the leave policies varied in the cases before the Court, as had policies subject to earlier lower court decisions,³¹¹ both provided a mandatory leave for a specified number of months, without pay, and with little job security. What is relevant for the purposes of this Article is that the Court found administrative convenience unacceptable as a basis for so dealing with pregnant employees. Such a view should likewise be adopted by ICJS employers. They should trade in their stereotyped notions about pregnant workers, and women generally because of their possibilities of becoming pregnant, and replace them with individual determinations. The fact of pregnancy or even the presence of children should not in itself disqualify a woman from any position in the ICJS.³¹²

A third instance of a seemingly neutral ICJS employment requirement which may be unlawfully discriminatory involves educational requirements. Although most cases which have held educational requirements illegal unless specifically validated have involved race, it may be possible to find sex discrimination if one sex has been substantially excluded, formally or informally, from the required educational experience. For example, in the court officials positions in the ICJS, lawyer status is almost always a prerequisite, yet in the past women have been effectively excluded from law schools and thus comprise only three percent of the lawyers in this country.³¹³ The resolution of a potential

³⁰⁹414 U.S. 632 (1974).

³¹⁰The Court did not decide whether the leave should be paid. It should be remembered that these cases were brought before the public educational employees amendment to Title VII and thus relied upon the Constitution for jurisdictional basis. Therefore, the specific issue of Title VII and its guidelines was not decided, although obviously the Court recognized the analogous nature of its opinion. *See id.* at 638-39 n.8.

³¹¹*See, e.g.,* *Bravo v. Board of Educ.*, 345 F. Supp. 155 (N.D. Ill. 1972); *Health v. Westerville Bd. of Educ.*, 345 F. Supp. 501 (S.D. Ohio 1972); *Williams v. San Francisco United School Dist.*, 340 F. Supp. 438 (N.D. Cal. 1972); *Sinks v. Mays*, 332 F. Supp. 254 (N.D. Ga. 1971). For other examples of different policies, *see* T. HAYDEN, *supra* note 303, at 37-38.

³¹²One highlighting example to illustrate the opposite point of view is found in T. HAYDEN, *supra* note 303, at 28:

A senior portfolio analyst at Merrill, Lynch, Pierce, Fenner and Smith reports that she was told by her supervisor (a woman) that she must take maternity leave, as coming to work in a maternity dress would be like coming to work in dungarees, a "blemish upon the department." You cannot perform in a man's job while acting like a woman.

³¹³*See* White, *supra* note 43, at 1051.

charge of sex discrimination is not to eliminate the requirement that to be qualified for a job one must be a lawyer but rather for the employer to establish that lawyer status is job related. That is, an employer should prove that a court official's job is performed significantly better by a lawyer. If this standard can be met there will be no violation of Title VII or any other equal employment legislation. However, there may yet be a need to establish an "affirmative action" policy³¹⁴ to encourage more women, if that is the underrepresented sex, and it is in this example, to enter law school, the necessary prerequisite to becoming a lawyer. Without this second step the relative position of women in the system would be excruciatingly slow to change. The other step, admission to the bar, must also be a sex-less process and its job-relatedness should also be specifically established.³¹⁵

Another form of the discriminatory use of educational requirements is to be found in the employment of informal standards in hiring practices. For example, an employer may formally require as a minimum that all persons have a high school diploma but informally never consider a woman with less than a college degree.³¹⁶ Obviously, such a procedure is illegal, but its opponents may face an evidentially difficult burden of proof. Related to the problem of educational qualifications are work experience requirements which, although neutral on their faces, can result in discrimination. Again, the principles in this area have come from cases involving race,³¹⁷ but they are applicable as well to sex, and the reasoning that should be followed is similar to that used above in analyzing the effect of educational requirements. A key example of this potential problem in the ICJS is in the field of corrections. To varying degrees, professionals in the corrections subsystem of the ICJS must meet a minimum educational requirement and have had a certain specified number of years of experience in corrections work. This experience may be gained by work in correctional institutions, in parole, probation, or social work, or by experience in a related field.³¹⁸ Additionally,

³¹⁴For further development of affirmative action requirements and legal bases, see text accompanying note 339 *infra*.

³¹⁵For a critique of typical bar examinations, see Bell, *Do Bar Examinations Serve a Useful Purpose?*, 57 A.B.A.J. 1215 (1971).

³¹⁶Such informal discrimination is reflected in admission standards in the military. Ginsburg, *The Need for the Equal Rights Amendment*, 59 A.B.A.J. 1013, 1018 (1973).

³¹⁷*E.g.*, *United States v. Sheet Metal Workers Local 36*, 416 F.2d 123 (8th Cir. 1969); *Asbestos Workers Local 53 v. Vogler*, 407 F.2d 1047 (5th Cir. 1969); *cf.*, *Dobbins v. Electrical Workers Local 212*, 292 F. Supp. 413 (S.D. Ohio 1968). See also *Developments, supra* note 52, at 1145-50.

³¹⁸See notes 200, 210, and 242 & accompanying text *supra*.

a certain minimum number of years must be in positions administrative in nature.³¹⁹ Although neutral on its face, this work experience requirement may have a disparate effect on women if they have been effectively excluded from the fields considered preparatory. In Indiana several women have positions in probation, parole, or social work,³²⁰ but few have administrative positions and thus could not qualify. Again, the next step is to establish the job related character of these requirements and, even if successfully shown, encourage development of affirmative action policies to substantially increase the pool of available women. This same work experience argument can be applied to the entry level police office position since it also qualifies persons for administrative and professional positions in the field of law enforcement.³²¹

A fourth area of pre-employment inquiry is testing. There has been considerable literature concerning culturally biased testing which adversely affects Blacks and other minorities,³²² but there have also been occasional allegations of cultural biases adversely affecting women.³²³ Specifically, in the ICJS, tests are used for various law enforcement positions, both at the entry level and for promotions.³²⁴ It is essential that these tests be legally and psychologically valid once it is shown that members of a protected group score significantly and disproportionately lower than others. This disparate effect is most common in aptitude or general intelligence tests commonly used for law enforcement positions. Such tests have rarely been validated.³²⁵ The validation

³¹⁹*Id.*

³²⁰The chart appended to this Article reveals approximately fifty-seven women in ICJS probation and parole work.

³²¹See notes 120, 122, and 125 & accompanying text *supra*.

³²²The most exhaustive article is Cooper & Sobol, *Seniority and Testing Under Fair Employment Laws: A General Approach to Objective Criteria of Hiring and Promotion*, 82 HARV. L. REV. 1598 (1969). See also Griggs v. Duke Power Co., 401 U.S. 424 (1971); E. GHISELLI, *THE VALIDITY OF OCCUPATIONAL APTITUDE TESTS* (1966); R. KIRPATRICK, *TESTING AND FAIR EMPLOYMENT* (1968); Note, *Legal Implications of the Use of Standardized Ability Tests in Employment and Education*, 68 COLUM. L. REV. 691 (1968); *Developments, supra* note 52, at 1120-40.

³²³In *Smith v. City of East Cleveland*, 363 F. Supp. 1131 (N.D. Ohio 1973), the court did not rule on the allegation that promotion tests discriminated against women since too few women had taken the test. See also Murray, *Sex Discrimination and a Legal Education*, 22 BRIEF/CASE 7, 8 (Dec. 1972).

³²⁴See notes 118, 120, 122, and 125 *supra*.

³²⁵See *Bridgeport Guardians, Inc. v. Bridgeport Civil Service Comm'n*, 482 F.2d 1333 (2d Cir. 1973) (police); *Officers for Justice v. Civil Service Comm'n*, 371 F. Supp. 1328 (N.D. Cal. 1973) (police); *Fowler v. Schwarzwaldner*, 351 F. Supp. 721 (D. Minn. 1972) (fire); *Pennsylvania v. O'Neill*, 348 F. Supp. 1084 (E.D. Pa. 1972), *aff'd in relevant part by an equally divided court*, 473 F.2d 1029 (3d Cir. 1973) (en banc) (police).

procedure to be followed is essentially the same utilized in evaluating any other apparently neutral requirement, with special attention given to proper job analysis, which more effectively enables the testmaker to determine what to test for.³²⁶

Another problem which has arisen in other law enforcement agencies is the use of separate job lines and thus separate lines of promotion. For example, there may be policeman and policewoman positions, open only to men and women respectively, which involve different kinds of tasks.³²⁷ The legal issues involved are not the rationality of separate job classifications or whether their use is a good management technique, but rather the exclusion of one sex from a particular job and the present effect of this past exclusion once the lines are sexually or racially integrated.³²⁸ Obviously, since the effective date of Title VII and other equal employment opportunity statutes and regulations, an applicant may not be denied a job on the basis of sex, unless the employer establishes a bfoq exception. Since it is unlikely that a bfoq exception could be established for law enforcement positions³²⁹ or for court and correction officials, sex-segregated job lines must be abolished. The next step is to deal with the present effect of past exclusion, an issue which arises in determining promotion qualifications. For instance, if four years of experience at the patrol entry level is required in order to qualify to take the sergeant's exam, does four years of experience as a "policewoman" count? Although this question has been answered variously in cases involving women police,³³⁰ industrial cases dealing with previously discrimi-

³²⁶Cooper & Sobol, *supra* note 322, at 1665-69.

³²⁷*E.g.*, this separation appears typical in New York. See *Button v. Rockefeller*, 6 Fair Empl. Prac. Cas. 588 (N.Y. Sup. Ct. Albany County 1973), and cases cited in note 330 *infra*.

³²⁸See Equal Employment Opportunity Comm'n, Guidelines on Discrimination Because of Sex, 29 C.F.R. § 1604.3 (1973).

³²⁹*Height Standards*, *supra* note 288, at 621.

³³⁰In *Shpritzer v. Sang*, 17 App. Div. 2d 285, 234 N.Y.S.2d 285 (1962), the court ruled the woman plaintiff qualified to take the sergeant's exam even though the duties of a policewoman and policeman differed. The primary force behind the court's decision, it appears, was the desire to avoid constitutional questions. *But see Berni v. Leonard*, 69 Misc. 2d 935, 331 N.Y.S.2d 193 (Sup. Ct.), *aff'd*, 40 App. Div. 2d 701, 336 N.Y.S.2d 620 (1972), *aff'd*, 32 N.Y.2d 933, 300 N.E.2d 734, 347 N.Y.S.2d 198, *cert. denied*, 94 S. Ct. 551 (1973), which held that one could not take the sergeant's exam until the applicant had served four years as a patrolman. The question of whether a woman could be come a "patrolman" was left unresolved as an issue not before the court.

It is the authors' contention that the *Berni* case is wrong and in fact the question of whether the qualifying job was open to women was essential to the resolution of the case.

natory seniority systems are basically consistent.³³¹ Typically "plantwide" or "employer" seniority is used for those employees affected by a previously discriminatory system.³³² However, new employees, hired into desegregated positions, are given job seniority and are promoted on the same basis as other employees. For the most part, the issue of present effects of past discrimination is one affecting only a small number of employees but for whom a remedy, carefully and narrowly defined, is essential.

One final issue, which must be raised involves the use of and reliance on "reputation" or personal references as a job requirement. Although references are commonly requested for most jobs, there is particular mention of this requirement in Indiana for judicial positions filled by persons nominated by the Judicial Nominating Commission.³³³ In general, requests for references or evaluations of reputation in determining whether to hire a particular person are perfectly lawful and indeed a sensible policy since presumably the more information an employer has about a person the better the decision-making process. However, the subjective nature of these evaluations should be recognized and taken into account when weighing their value.

In some cases the references may be used in order to further a nepotistic-like policy.³³⁴ If a disparate effect can be shown because of a nepotistic or extreme anti-nepotistic policy, the courts have not hesitated to abolish the requirement since nepotism is in no way job-related.³³⁵ In other cases stereotyped characterizations constitute the problem. Since bias has not been eliminated from society, it is possible to foresee a situation in which a woman or a Black does not have a reputation or references equal to a white man simply because of the lesser values which some members of society place upon a woman's achievements.³³⁶ Once again,

³³¹*E.g.*, in *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711 (7th Cir. 1969), a sex separate seniority system was ruled a violation of Title VII. Racially segregated systems have also been ruled illegal. *Local 189, United Papermakers & Paperworkers v. United States*, 416 F.2d 980 (5th Cir. 1969), *cert. denied*, 397 U.S. 919 (1970); *Quarles v. Philip Morris, Inc.*, 279 F. Supp. 505 (E.D. Va. 1968).

³³²See *Cooper & Sobol*, *supra* note 322, at 1615-36; *Developments*, *supra* note 52, at 1158-64; and cases cited in note 331 *supra*.

³³³See text accompanying note 158 *supra*.

³³⁴*Developments*, *supra* note 52, at 1150.

³³⁵*Asbestos Workers Local 53 v. Vogler*, 407 F.2d 1047 (5th Cir. 1969); *United States v. Ironworkers Local 86*, 315 F. Supp. 1202 (W.D. Utah 1970).

Anti-nepotism policies, particularly at universities, which have an adverse effect on women are suspect. See U.S. DEPT. OF HEALTH, EDUCATION AND WELFARE, OFFICE FOR CIVIL RIGHTS, HIGHER EDUCATION GUIDELINES, EXECUTIVE ORDER 11246, at 8 (1972).

³³⁶"The men at the top replicate themselves . . . affinity is all-school affinity, industrial affinity, club affinity, social class and economic affinity.

the solution is not to eliminate the requirement of references or the evaluation of reputation but rather to be cognizant of the potential discrimination.

The issues which arise in evaluating employment practices are many and varied.³³⁷ Some present subjective problems difficult to resolve speedily, while others are only problems until employers are conscious of the discrimination. Title VII and other equal opportunity laws and regulations require a great deal from employers. They are forced to evaluate all tests and other standards employed, since all such devices and criteria are presumed illegal, *i.e.*, discriminatory, until proven lawful, *i.e.*, validated. Furthermore, employers are mandated to examine their entire employment process which amounts even at best to educated guessing. However, viewed from a different perspective, these laws do encourage employers to make employment decisions on as rational a basis as possible. Their aim is to force employers to review their employment policies to insure that decisions are made on the basis of individual capacities and capabilities rather than on stereotyped images and characteristics. Although the legal mandate may appear unwarranted to those who feel the goals are impossible, it is the authors' belief that the goals are feasible and, in fact, will result in a more effective and responsive criminal justice system. However, the process will require a revision of the system's perceptions as to who is qualified. Within the ICJS one should not hear the following:

One personnel chief summed up the [Wall] Street's anti-woman version of Catch 22 by saying, "You can't be feminine in this business [stock market]. We're looking for people who must excel, must win. They must be very competitive and have strong egos. The popular con-

Women are commonly seen as outsiders.'" Whol, *What's So Rare as a Woman on Wall Street*, 1 Ms. 82, 127 (June 1973). See also Murray, *supra* note 323, at 8-9; Equal Employment Opportunity Comm'n, Guidelines on Discrimination Because of Sex, 29 C.F.R. § 1604.2(a) (1) (1973).

³³⁷A different kind of problem can be seen in the situation described in Wohl, *supra* note 336, at 127: Merrill Lynch, a prominent stock-brokerage firm, has only 150 women among 5,200 brokers because of the lack of "qualified women." Merrill Lynch seeks "winners" and believes "the true winner seldom has a wife who works, for his ego requires that he be the full support of the family.'" And a personality test given to all Merrill Lynch applicants asks whether the candidate objects to "your wife working outside the home." Obviously a woman cannot be a "winner" on that question. Moreover, men who need dependent wives as ego props are unlikely to view the few women who do get hired as equals. They would hardly be likely even to view the woman applicant as qualified.

ception is that women who have these qualities are neurotic. Who wants to hire a neurotic woman?"³³⁸

V. RECOMMENDED ICJS AFFIRMATIVE ACTION PLAN

In the previous sections of this Article, the authors have asserted their belief that women are discriminated against in the employment of ICJS executives, managers, and professionals, and have detailed a few of the ways in which this discrimination has been effected. This section describes affirmative action programs needed to counteract this situation. All ICJS employers should develop and adopt affirmative action plans. These plans must be tailored to particular employment situations and, thus, although it is possible for the state, the counties, the cities, and the towns to adopt system-wide affirmative action programs to cover all their respective employees, it is suggested that further refinement is required within each unit in order to facilitate specific but consistent programs.³³⁹

Affirmative action programs are designed to effectuate equal employment opportunity policies as expressed in various laws and regulations. Such programs reduce reliance on a case-to-case basis for enforcement, provide faster, more effective relief to affected employees or potential employees, and generally make equal opportunity a reality, not simply rhetoric. The key to an affirmative action program is its mandate of a continuing program of employer self-evaluation. Plans are written on the basis of an employer's own requirements, policies, and collected data. Affirmative action obligations are twofold. First, an employer must eliminate all present discriminatory practices and conditions. That is achieved by complying with present equal opportunity laws. Secondly, an employer must take further affirmative steps to increase minority group and female participation in the particular work force. This latter obligation is analogous to a remedy, for it seeks to overcome the present effects of past discrimination. Thus, a plan is designed to aid not only future or potential employees but also present employees. The suggested adoption of such plans has a firm foundation; they are required by law.

³³⁸Wohl, *supra* note 336, at 127. Note the confusion of woman and feminine.

³³⁹Obviously excluded from any criminal justice system affirmative action plan are elected officials, such as prosecutors, sheriffs, and judges. This exclusion does not, however, indicate any opinion for or against these offices remaining elective.

A more specific delegation is also apparent in the Law Enforcement Assistance Administration's equal opportunity guidelines, 28 C.F.R. § 42.301 (1973), discussed at note 342 *infra*.

The authority for requiring affirmative action plans by ICJS employers comes from several sources. Of primary importance is Executive Order 11,246,³⁴⁰ which prohibits certain federal contractors from discriminating against an employee or applicant on the basis of sex, as well as race, religion, or national origin. The Order also requires employers to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, sex, religion, or national origin. The Secretary of Labor is designated as the administrator of these programs but may delegate this responsibility to other agencies.³⁴¹ In 1973 the Law Enforcement Assistance Administration (LEAA) of the United States Department of Justice issued specific guidelines requiring an "Equal Opportunity Program" relating to employment practices affecting minority group persons and women from each LEAA assistance recipient which has fifty or more employees and has received grants in excess of \$25,000.³⁴²

Authority for affirmative action plans also comes from the remedy provisions of Title VII of the Civil Rights Act of 1964. Often, before entering into a conciliation agreement with an employer charged with a violation, the Equal Employment Opportunity Commission will require an affirmative action plan.³⁴³ In addition, the Act itself gives the federal courts broad remedial powers, including ordering "such affirmative action as may be appropriate."³⁴⁴ If an employer has an implemented affirmative action plan, the likelihood of conciliation with the EEOC and of relatively minor, if any, damage awards in court increases.

³⁴⁰3 C.F.R. 169 (1974), 42 U.S.C. § 2000e (1970).

³⁴¹For example, the Department of Health, Education, and Welfare has responsibility for educational institutions and hospitals. The Department of Treasury has responsibility for banks and other lending institutions.

³⁴²Law Enforcement Assistance Administration Guidelines, 28 C.F.R. § 42.301 (1973). The guidelines include the further requirement that the "recipient" be located in a geographic area where the available minority workforce is three percent or more of the total workforce. *Id.* § 42.302(b). It is unclear whether a written plan would be required under these guidelines if the minority population in a given area was below three percent but the female population was significant. One could argue a plan is necessary since the employer engages in separate analyses of each.

It is also possible for an affirmative action plan to be required under other regulations even though a unit may not be covered under LEAA.

³⁴³42 U.S.C. § 2000e-5(b) (Supp. III, 1973).

³⁴⁴*Id.* § 2000e-5(g). Such remedies have been ordered in several police and fire departments for minorities. *See* *Morrow v. Crisler*, 491 F.2d 1053 (5th Cir. 1974) (en banc); *Bridgeport Guardians, Inc. v. Bridgeport Civil Service Comm'n*, 482 F.2d 1333 (2d Cir. 1973); *Carter v. Gallagher*, 452 F.2d 315 (8th Cir. 1971) (en banc), *cert. denied*, 406 U.S. 950 (1972).

Apart from the legal considerations involved in the implementation of affirmative action programs are the practical benefits that will flow to an ICJS employer. One immediate result of a viable plan will be an increase in the total number of persons in the applicant pool, thus broadening the base from which employees come. Additional applicants will afford the employer more alternatives and increase the likelihood of finding desirable employees. The reevaluation of employment techniques such a program entails will also promote better selection practices within the system. For example, if a pre-employment or promotion test has not been validated, it may not be furnishing the employer with any useful information. Test administration is time consuming and expensive; if a test has no predictive value, then both the time and money expended have been wasted. In fact, such a test or other nonvalidated pre-employment inquiry may well cost the employer qualified employees.³⁴⁵ In short, because an affirmative action plan requires a systematic review of all terms and conditions of employment, policies and practices will be examined for their effectiveness, a valuable objective regardless of equal opportunity demands.

The specifics of an affirmative action plan can be quite complex; however, detailed guidelines from appropriate agencies are available.³⁴⁶ Basic to all affirmative action plans is an evaluation of the employer's present work force, including the total number of employees in each position as well as the number of women and minorities in each. Further, all recruitment and selection procedures should be examined, and an analysis made by race, sex, and national origin of the number of persons applying for employment, accepting employment, applying for promotion, receiving promotion, and terminating, both voluntarily and involuntarily. Finally, information should be gathered to determine the community and area labor force characteristics, *e.g.*, total population, work force population, existing unemployment, all with information as to sex, race, and national origin. For example, if a city police department recruits city-wide, county-wide, or region-wide, labor force characteristics from that area are needed. Additionally, if an employer requires certain educational achieve-

³⁴⁵Recent research indicates policemen are typically ranked higher in categories such as "strong" and "aggressive" while policewomen are thought to be more "understanding" and "compassionate." P. BLOCH & D. ANDERSON, *supra* note 5, at 10. However, women police executives as a group may exhibit more strength in leadership-associated personality traits than do male police executives as a group. Price, *A Study of Leadership Strength of Female Police Executives*, 2 J. POL. SCI. & ADMIN. 219 (1974).

³⁴⁶See note 342 *supra*; 41 C.F.R. § 60-2 (1973).

ments for employees, as do many in the ICJS, those people with the appropriate training need to be ascertained.

Once these data have been collected, areas of disproportionate employment are easily detected. It then becomes the obligation of the employer to examine those areas of disproportion to determine if the employment of women and minorities is inhibited by any internal or external factor. If so, the employer must set about to remedy the situation. Secondly, once the data is known, the employer can establish goals and timetables which reflect his or her decision as to how many women and minority employees are an adequate balance and predict when these goals will likely be reached. Finally, a plan should also indicate what positive steps an employer plans to take to achieve these self-imposed goals.³⁴⁷

At this point, it should be emphasized that it is an essential characteristic of the 1970's affirmative action plans that the goals and timetables are determined internally by individual employers and not imposed externally by governmental agencies. Secondly, since the employment problems for women and minorities differ substantially, there should be a separate analysis and a separate response for women and for minorities. In the past the typical problem in terms of employment for women has been underutilization; for minorities, cultural biases are usually the key.

As with any recommendation, there are criticisms of affirmative action which need to be explored. First, an issue exists as to whether "goals" is a euphemism for "quotas." All official literature carefully avoids the use of "quota," but often employers act as if any distinction is only one of semantics. However, in a legal sense there is a difference between goals and quotas, although both can take the form of concrete numbers. For example, a county probation department may set its employment goal at three women and three men officers when its present composition is one woman and five men. It is later unable to attain its goal as a result of having only one vacancy or because after extending offers to several women, none accept due to locale, social factors, etc. Such a situation would not be a violation, since the department could establish its good faith efforts in pursuing its affirmative action program. On the other hand, quotas are neither flexible nor subject to a "good faith" defense. The assumption that goals and quotas are identical can in fact have detrimental effects for both employees and employers. Quotas en-

³⁴⁷As indicated above, all terms and conditions of employment as well as recruitment are covered by an affirmative action plan. For example, plans include analysis of grievance procedures, maternity leaves, testing, and pay. See also the discussion of legal issues in text accompanying notes 283-388 *supra*.

courage employers to hire by sex, race, or national origin alone—according to body, not ability. Thus, there is in quotas the danger of hiring unsuitable people who then become dissatisfied employees because they cannot, for whatever reason, do the job.

This idea that affirmative action will result in a lower quality of employees forms a second criticism. As indicated above, correctly written affirmative action plans take into account valid qualifications. In fact, affirmative action can have the reverse effect and raise employee quality, since there is an expanded pool from which to draw. In assessing this criticism one should not overlook the troublesome nature of the concept of "quality" itself. That is, how is "quality" to be determined and how can it be freed from sex-based notions.

A third criticism of affirmative action is that it is unfair to white males and thus illegal and undesirable as reverse discrimination.³⁴⁸ First, once an affirmative action plan is in effect, there is nothing to prevent an employer from hiring a white male, but the deck may no longer be stacked in his favor. Secondly, to hire or to promote only on the basis of sex—either sex—is unlawful.³⁴⁹ Reverse discrimination is discrimination. Finally, it is possible that in the past some unqualified people were hired or promoted. To the extent that is true, the adoption of affirmative action may have an adverse impact on these types of people.

Once an affirmative action plan is adopted, it is important that it be communicated and explained to all employees. In order to deal with the inevitable anxieties of present employees, the person responsible for equal opportunity must be given sufficient authority. Furthermore, compliance with the plan by employees should be recognized in any reward system of the employer as is any other action which promotes the agency. Although initially an affirmative action plan results in considerable expenditures of

³⁴⁸The legality of a more strict affirmative action plan was upheld in *Contractors Ass'n v. Secretary of Labor*, 442 F.2d 159 (3d Cir. 1971) (Philadelphia Plan with specific ranges imposed by the government). A modern test did not yield a definitive result in *DeFunis v. Odegaard*, 94 S. Ct. 1704 (1974). However, many commentators see Justice Douglas' dissent as predictive.

For a discussion of the constitutionality of affirmative action plans, see Getman, *The Emerging Principles of Sexual Equality*, 1972 SUP. CT. REV. 157, 166-73 (1972); *Developments, supra* note 52, at 1279-80.

³⁴⁹A common misunderstanding is that "sex" means "woman" and "race" means "Black." It is true that affirmative action policies are a response to particular problems, primarily underutilization of women and minorities in the work force. However, discrimination against a man because of his sex or against a caucasian because of race is illegal. There seems little likelihood that employers will only hire women and Blacks once one examines the progress of equal employment during the last ten years.

administrative time, the monitoring, once established, becomes institutionalized and less time consuming. Some day the need for this particular remedy will dissipate. However, for the moment its benefits outweigh any anxieties.

VI. SUMMARY AND CONCLUSIONS

Women are increasingly seeking executive, managerial, and professional positions in business, industry, government, and academia as well as almost any other area imaginable. Traditionally, they have been explicitly denied these positions on the basis of their sex and the commonly-held stereotyped notions about their sex. In the past decade, explicit sex discrimination in employment has faded because of an adverse legal environment, a revitalized women's movement, and a recognized need to identify the highest qualified prospective employees. However, in many instances sex discrimination continues, changing only from overt to covert tactics. Moreover, the bases of this discrimination, stereotyped notions and attitudes, remain in the minds of many employers.

The authors submit that employment in the ICJS is not unlike employment in other fields. Although express requirements for executive, managerial, and professional ICJS positions do not refer to the sex of candidates, the educational, physical, health, work experience, testing, and general reputation requirements can covertly discriminate against women candidates. Further, it is suspected that criminal justice systems are bastions of classic male chauvinism which operate in a variety of unspoken ways to effectively exclude women executives, managers, and professionals.

It is most strongly recommended that all ICJS agencies develop and implement affirmative action programs, so clearly needed by the society it serves and so clearly commanded by the legal environment in which it operates. As a legal system, it is most prudent for the ICJS to comply with the law. As a system operated by people with financial support from the general public, the ICJS has an undeniable need for the best people available to fill its positions of responsibility and trust. Moreover, since the ICJS asks the society it serves to have respect for law and agents of the law, the ICJS should serve as a model of legal propriety. Affirmative action programs, coupled with candid, honest evaluations of present agency attitudes and policies, are steps in the right direction.

Appendix

Indiana (State)	Law Enforcement	Lawyers/Courts	Corrections
Law Enforcement	<p>State Police: 872 police officers total women 0 601 troopers 271 above rank of trooper</p> <p><i>District level</i> (20) Typical district has: 1 District Commander (Lt.) 1 Exec. Officer (1st Sgt.) 2 Line command Sgt. 3 Detective Sgts. 4 + other sgt. (administrative) troopers</p> <p><i>State level</i> 1 Superintendent 4 Executive Officer (Lt. Col.) 9 Division Heads (Majors) <i>e.g.</i>: records, investigations, logistics Section (within each division) (Lt./Sgts.)</p>	<p><i>Attorney General</i> (1) Chief Deputies (3) Assistant Attorney General (12) Deputy Attorney General (49)/4W</p> <p><i>Public Defender</i> Public Defenders (1W) Assistant Public Defender (1) Deputy Public Defender (6)</p> <p><i>Courts:</i> Courts of Appeals — (9) Supreme Court — (5)</p>	<p><i>Dept. of Corrections:</i> Administration Total 17 men 16 unfilled 1</p> <p><i>Parole:</i> Ind. Parole Board Total (5) Adult Parole Division, Parole Officers total 37/1W</p> <p><i>Institutions:</i> State Prison (2) Warden, Bus. Admin. (2) Reformatory (2) Superintendent, Bus. Admin. (2) Ind. State Farm (2) Superintendent, Bus. Admin. (1W) Women's Prison (1M) Superintendent (4W) Bus. Admin. (2) Parole Board (2) Reception Diagnostic Center Director, Bus. Admin. (2) Indpls. Work Release Center Director, Bus. Admin. (2) (excludes juvenile systems)</p>

County, City or Town	LAW ENFORCEMENT										LAWYERS/COURTS						CORRECTIONS			
	Police:		Capt.	Lt.	Sgt.	Corp.	Patrol (2nd Recruits)	Sheriff or Marshal	Dep.	Prosecuting Attny.	Dep. or Asst. Defender	Private Attnys	Court Judges	Probation Officers	Dep.	Jailers and Matrons	Dep. or Asst.			
	Chief	Dep. Asst.																		
(911) Brooklyn								(1)												
(5000) (2961) Mooresville								(1)	(8)			(1W)								
(1134) (592) Morgantown								(1)	(1)											
NEWTON CO.			(1)		(1)		(3)	(1)		(1)		(11)	(1)Cir.	X		(1W)				
Towns: (919) Brook								(1)												
(1864) (607) Goodland								(1)												
(1285) (671) Morocco								(1)	(1)											
(194) Mt. Ayr								(1)												
NOBLE CO.								(1)	X	(1)		(17)	(1)Cir.	X						
City: (6838) (3577) Kendallville	(1)		(1)		(2)			(6) + 8 FT		(1)			(1W)							
(3034) (1603) Ligonier	(1)						(3) + 1 FT			(1)			--							
Towns: (1498) (770) Albion								(1)	(1) PT											
(881) Avilla								(1)					(1)							
(475) Crowsell								(1)					(1)							
(1354) (680) Rome City								(1)												
(915) Wolcottville	See under LaGrange Co.																			
OHIO CO.								(1)	(1)	(1) joint Cir. with Dearborn Co.		(3)	(1) Cir. (1b)	X		(1W)				
City: (2305) (1240) Rising Sun	(1)					(3)				(1)			--							
ORANGE CO.								(1)	(3)	(1)		(7) (1W)	(1)Cir.	(1W) Cir. Ct.		(1W)				
Towns: (2059) (1039) French Lick								--												
(1934) (957) Orleans								(1)	(1) PT											
(3281) (1740) Paoli								(1)	(3)											
(930) West Baden Springs								(1)												
OWEN CO.								(1)	X	(1)		(12)	(1)Cir.	X						
Towns: (692) Gosport								(1)												
(2423) (1309) Spencer								(1)												
PARKE CO.								(1)	(3)	(1)	(1)	(8)	(1)Cir.	(1W)		(1W)				
Towns: (391) Bloomingdale								(1)												
(35) Judson								--												
(365) Marshall								--												
(1192) (651) Montezuma								(1)												
(2820) (1542) Rockville			(1)					(1)	(3)											
(817) Rosedale								(1)												
(263) Spring Lake	See under Hancock Co.																			
PERRY CO.								(1)	(2)	(1)		(10)	(1)Cir.	(1)	(1W)	(1W)				
City: (1192) (2280) Cannelton	(1)						(2) + (1) PT			(1)			(1)							
(7933) (9119) Tell City	(1)	(1)					(6)			(1)			(1)							
(575) Troy								--												
Pike CO.								(1)	(1)	(1)	(1) at. pd.	(8)	(1)Cir.	(1)		(1W)				

County, City or Town	LAW ENFORCEMENT										LAWYERS/COURTS					CORRECTIONS		
	Police:		Capt.	Lt.	Sgt.	Corp.	Patrol (and Recruits)	Sheriff or Marshall	Dep.	Prosecuting Attny.	Dep. or Asst.	Public Defender	Private Dep. Attyns	Court Judge	Probation Officers	Dep.	Jailers and Matrons	Dep. or Asst.
Chief	Dep. Asst.																	
(924)																		
Ridgeville (406)							(2)											
Saratoga							(1)											
RIPLEY CO.							(1)	(2)	(1)	(1)		(14)	(1)Cir.	(1)				
City: (3799) (1972)																		
Batesville	See under		Franklin Co.															
Towns: (1260) (676)																		
Milen (282)							(1)											
Napoleon (1346) (721)							(1)											
Osgood (707)							--											
Summan (1020) (540)							(1)						(1)					
Vereesillee							(1)											
RUSH CO.							(1)	X	(1)			(16)	(1)Cir.	X				
City: (6686) (3561)																		
Rushville	X								(1)				(1)					
Towns: (946)																		
Garchage (452)							(1)											
Glenwood	See under		Fayette Co.															
SANIT JOSEPH CO.		(2)	(7)		(14)	(68) (20)	(1)		(1) (1) ch. dep.	(9)	(3)	(289) (40)	(1)Cir. (5)Sup.	(1)	(3)	(40)		
City: (35,517) (18,659)																		
Hieheronka	X								(1)				--					
(125,580) (65,822)																		
South Bend	X								(1)				--					
Towns: (86)																		
Indian Village (712)							--											
Lakeville (1434) (761)							(1)											
New Carlisle (1259) (663)							(1)	(2)										
North Liberty (1572) (792)							(1)	(3)										
Osceola (895)	(1)	(1)							(1) (6)PT									
Roseland (2006) (1023)							(1)											
Walkerton							(1)	(5)										
SCOTT CO.							(1)	(1)PT				(9)	(1)Cir.	(10)	(10)			
City: (4,791)									(1)									
Scottsburg	(1)					(7)			(1)				--					
Towns: (4902) (2468)							(1)											
Austin							(1)											
SHELBY CO.							(1)	X	(1)			(35) (10)	(1)Cir. (1)Sup.	X				
City: (15,094) (7976)																		
Shelbyville	(23)	total	no ranks given						(1)				(10)					
Towns: (838)																		
Morristown (785)							--											
St. Paul	See under		Decatur Co.															
SPENCER CO.							(1)	X	(1)			(10) (20)	(1)Cir.	X				
City: (2565) (1332)																		
Rockport	X								(1)				(1)					
Towns: (550)																		
Chrisney (1113) (569)							(1)											
Dale (281)							(1)											
Gentryville (695)							(1)											
Grandview (63)							--											
Santa Claus							(1)											
STARKE CO.							(1)	(4)	(1)			(12)	(1)Cir.	(10)	(10)			
City: (3519) (1852)																		
Knox	(1)				(1)	(4)			(1)				(1)					

County, City or Town	LAW ENFORCEMENT										LAWYERS/COURTS					CORRECTIONS		
	Police:		Capt.	Lt.	Sgt.	Corp.	Patrol (and Recruits)	Sheriff or Marshall	Dep.	Prosecuting Attny.	Dep. or Asst.	Public Defender	Private Dep. Attnys	Court (Judge)	Probation Officers	Jailers and Matrons	Dep. or Asst.	
Chief	Dep. Assn.																	
TOWNS: (761)																		
Waulet (1738) (902) Worth Judson							(1)	(1)										
SPRUNG CO.							(1)	(11) (6)PT	(1)			(17)	(1)Cir.	(1)		(1W)		
City: Angola (5117) (2169)	(1)					(6)			(1)				(1)					
Towns: (271)																		
Clear Lake (1043) (551) Fremont (537)							(1)											
Hamilton (464)	See under DeKalb Co.																	
Hudson (457)																		
Orland							(1)						(12) (1W)	(1)Cir.	X			
SULLIVAN CO.							(1)	(3)	(1)									
City: Sullivan (4683) (2577)	(1)	(1)			(1)	(5)			(1)					--				
Towns: (714)																		
Carlisle (1150) (605) Dugger (962)																		
Farmasburg (907)							(1)											
Hymers (305)							(1)											
Marion (1281) (658) Shelburn (1463) (998)							(1)	(2)+ (2)PT										
Vevay							(1)											
SWITZERLAND CO.							(1)	(2)	(1)	(1)		(3)	(1)Cir. (1)Ct.	(1)		(1W)		
Towns: (216)																		
Patriot							(1)											
TIPPECANOE CO.			(1)	(1)	(4)		(1)	(19) (18)	(1) + (1) (1W)	(4) (1W)	(1)		(11) (3W)	(1)Cir. (2)Sup.	(2) (1W)	(1)Jailer (3)W		
Cities: (44,955) (23,557) Lafayette (19,157) (8,743)	(1)	(1)			(8) (1W)	(9) + (6) det	(47)		(1)				(1)					
West Lafayette (818)	(1)		(3)		(6)	(16)			(1)				(1)					
Towns: (818)																		
Battle Ground (741)							(1)											
Clarks Hill (889)							(1)											
Darton							--											
TIPTON CO.							(1)	X	(1)				(10)	(1)Cir.	X			
City: Tipton (5176) (2682)	(1)	(1)			(3)	(3)			(1)				(1)					
Towns: (469)																		
Empton (672)							(1)											
Sharpsville (946)							(1)											
Windfall							(1)											
UNION CO.							(1)	(1W)	(1)	(1)		(8)	(1)Cir. (1)Ct.	(1)		(1)Jailer (1)W PT		
Towns: (975) (1831) Liberty (709)																		
West College Corner							(1)											
VANDERBURGH CO.						(6) det.	(49) (5W)	(1)	(1) ChDep. (1)ChAdm.	(7)+ (3) in- vt. 1W	(2)+ (2) in- vt.	(185) (4W)	(1)Cir. (4)Sup.	(1) (1) ch. dep.-1W	(1)	(1) 8-2W		
City: Evansville (138,745) (73,924)	(1)	(1) + (3) In- sp.	(11)	(15)	1W	87-1W 35det	(140) (10W)		(1)		(1)PT		(1)	(2) (1) PT				
Evansville																		
VERMILION CO.							(1)	(3)	(1)	(1)	(1)		(8)	(1)Cir.	(1)		(1W)	
City: Clinton (5360) (2876)	X								(1)					(1)				
Towns: (1090) (579) Cava														(1)				

County, City or Town	LAW ENFORCEMENT								LAWYERS/COURTS						CORRECTIONS						
	Police:		Capt.	Lt.	Sgt.	Corp.	Patrol (and Recruits)	Sheriff or Marshall	Dep.	Prosecuting Attny.	Dep. or Asst.	Public Defender	Private Attnys	Court (Judges)	Probation Officers	Dep.	Jailers and Matrons	Dep. or Asst.			
Chief	Asst.																				
(2481) (1320) Cambridge City							(1)	(2) + (2) PT													
(2330) (1263) Centerville							(1)	(1) + (3) spec. dep.													
(1021) (543) Dublin							(1)														
East Germantown/ Perahing (447)							(1)														
Economy (285)							--														
(852) Fountain City							(1)														
(444) Greensfork							(1)														
(2059) (1127) Hagerstown							(1)	(3)													
Milton (694)							(1)														
(157) Mt. Auburn							--														
(437) Spring Grove							--														
(111) Whitewater							--														
WELLS CO.							(1)	(3)	(1)				(17)	(1) Cir.	(1)	(1W)					
City: (8297) (4374) Bluffton	X								(1)					(1)							
Towns:																					
Markle (963)																					
(1538) Ossian (799)							(1)	(1)													
Poneto (286)							--														
(349) Unionsdale							(1)														
(140) Vere Grat							--														
WHITE CO.							(1)	(4)	(1) 1 invst.	(1)			(17)	(1) Cir.	(1)	(1W)	(1W)				
City: (4869) Monticello	(1)			(2)		(4)			(1)					(1)							
(1232) Towns: (644) Brookston							(1)	(1)													
(510) Burnettsville							(1)														
(544) Chalmers							(1)														
(1548) Monon (836)							(1)	(1)													
Reynolds (641)							(1)*														
Wolcott (894)							(1)														
WHITLEY CO.							(1)	X	(1)				(16) (2W)	(1) Cir.	(1)						
City: (4911) Columbia City	(1)			(3)	(2)	(5)			(1)					(1)							
(1528) Towns: (723) Churubusco							(4)	(4) PT													
(324) Larwill (1362) (723) South Whitley							--														
TOTALS	95	69	164 3 W	183 1 W	608 5 W	115	2422 66 W	438 4 W	4534 14 W	217 (2 W)	2W 37 2 Invst.	201 10 W 4 Invst.	36 4	1W Invst.	17	4907 172 W	278 8 W	154 40 W	21 7 W	39 jailers 86 matrons	3W

Notes to Appendix

(a) There are 92 counties, 114 cities, and 450 towns in Indiana.

(b) Most of the information in the chart is taken from the 100R report filed by each county, city, and town available from the State Board of Accounts, 912 State Office Building, Indianapolis, Indiana. Since these reports

contain at the best, first and last names of employees and since Equal Employment Opportunity forms which compile statistics according to sex are not public, the numbers of women indicated are the ones positively identified. There may be others but the percentage of women would not change substantially. The figures indicate total employees within each category and the indication of women (W) shows how many of the total are women.

Other information is from the Roster of state and local officials of the State of Indiana from the State Board of Accounts. Still other information, particularly concerning towns, is from the files of the Indiana Association of Cities and Towns. This latter information is provided on a voluntary basis by cities and towns.

(c) Number of attorneys is derived from the Indiana Supreme Court Disciplinary List, October 1972-73. Since there is no record of the type of practice in which attorneys are engaged, these figures represent total numbers of attorneys registered according to county and indicate the total number of women in each total. Again, this designation according to sex was derived from given names.

(d) By statute, county sheriffs manage county jails and thus function in a "corrections" capacity.

(e) X indicates no information was available.

(f) The first number is total population; the second is total female population for the political unit. Figures from the 1970 census.

(g) No attempt was made to distinguish full-time and part-time employees unless the 100R report stated specifically part-time.

(h) * indicates sex was indeterminable, usually because the report contained only the initials of the employees.

(j) E.E.A. employees are employed through emergency employment funds available from the federal government and are indicated as such when so reported on 100R. Use of such funds to increase the number of women employees is notable since the federal money is not permanently available.