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The 1970's and now the 1980's have witnessed the entry of women into the workforce in increasing numbers. However, their entry into the workforce has been accompanied by various forms of discrimination. The Equal Pay Act of 1963[1] and Title VII of the Civil Rights Act of 1964[2] were enacted in recognition of the need to rectify existing societal and employment discrimination, particularly sex-based discrimination. Despite this change in the legal rights and the status of women, the data suggests that the economic status of women, as indicated by wage differentials and occupational segregation, has changed very little relative to white males.[3] Further evidence suggests that litigation based on sex discrimination under Title VII or under the Constitution has yielded limited success as contrasted with litigation concerning race discrimination.[4]

One explanation for the limited success of sex discrimination litigation and its effect upon the economic status of women might be that women workers do not avail themselves of the legal remedies available to them. This would explain why the laws prohibiting sex discrimination may not have had their full impact. Thus, the question arises with what frequency do women file complaints. This article examines which union members, particularly women members, file complaints. This study examines factors that seem to explain why an individual worker becomes a risk seeker by filing a suit. The method used is an empirical study which identifies the factors, including gender or sex-related characteristics, that were common to individuals who filed suits. The study predicts, on the basis of individual characteristics, which union members (e.g., male or

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1 29 U.S.C. § 206(d) (1982).

2 42 U.S.C. §§ 2000e-1-17 (1982) (hereinafter "Title VII").

3 U.S. DEPARTMENT OF LABOR, WOMEN'S BUREAU, TWENTY FACTS ON WOMEN WORKERS (1980) [hereinafter TWENTY FACTS]; U.S. COMM'N ON CIVIL RIGHTS, SOCIAL INDICATORS OF EQUALITY FOR MINORITIES AND WOMEN (1978) [hereinafter EQUALITY FOR MINORITIES]. The evidence on occupational segregation is mixed. See Beller, *Title VII and the Male Female Earnings Gap: An Economic Analysis*, 1 HARV. WOMEN'S L. J., 157 (1978).

4 M. BERGER, LITIGATION ON BEHALF OF WOMEN, (1980). The Supreme Court is not as willing to treat sex, like race, as a suspect classification. Berger argues that this has substantially retarded the changes which might have otherwise occured through litigation. Califano v. Webster, 430 U.S. 313 (1977); General Elec. Co. v. Gilbert, 429 U.S. 125 (1976); Geduldig v. Aiello, 417 U.S. 484 (1974).

The results of litigation may understate the effect of Title VII because cases arising under similar facts as the above mentioned cases were not subsequently litigated.

female) will file discrimination suits with a government agency or through the court system.

This article initially discusses theories of litigiousness and factors influencing the filing of complaints. Part Two examines the historical and legal status of women. This examination reveals the view of both the judiciary, and more broadly, the view of the society toward women and the law which may affect the filing of complaints by women. Part Three considers how regulation designed to protect individual employees can alter the relationship between unions and employers and affect the litigiousness of individual employees. Part Four examines the status of women in the workplace in relation to their changing legal status in society. Part Five evaluates the factors influencing litigiousness based upon data gathered through a survey. The results were evaluated to determine under what conditions women workers file complaints.

I. Theories of Litigiousness and Factors Influencing the Filing of Complaints

Despite the legal remedies available to women, they may be inclined not to file complaints. There are two theories which may explain this. The first theory addresses the inevitable economic and non-economic costs which the individual incurs upon filing a complaint. The second theory attributes this disparity to the perception which women hold of their historical and legal status in society, particularly in the workplace.

The cost of filing a complaint influences the decision of an employee to seek legal resolution of his or her dispute. Sandra E. Gleason contends that "women experiencing illegal employment discrimination will decide what reaction (tolerating the discrimination or [filing a complaint]) is appropriate to their individual circumstances by comparing the expected gains or benefits from any actions to stop discrimination with costs which those actions will impose."[5] According to Gleason, "[t]he expected benefits are determined by the value of the future economic opportunities (job property rights) available in jobs without illegal discrimination."[6] An employee calculates the cost of filing a complaint based on an estimate of the risks associated with any action to seek relief from discrimination.

Although the Gleason thesis applies to women who file grievances and suits alleging sex discrimination, her thesis may also be applied to any woman who files grievances or suits of any type against her union or employer. This includes the filing of a suit under section 301 of the Taft-Hartley Act against a union, an employer, or a union and employer; or a section 8(b)(1)(a) charge against the union under the Taft-Hartley Act; or a Title VII suit against the union and/or employer. Women may not exercise these rights without fear of retaliation of some kind, given their economic and legal status and its effect on their self-perception. Gleason suggests three sets of factors which determine whether a person becomes

5 Gleason, *The Probability of Redress: Seeking External Support*, in OUTSIDERS ON THE INSIDE: WOMEN AND ORGANIZATIONS 171-86 (B. Florisha & B. Goldman eds. 1981).

6 *Id.* at 171.

what she calls a "risk avoider" as opposed to a "risk seeker"[7] who files a complaint. The three factors which determine whether women will file are: 1) expected benefits which are a function of future positions (job property rights) available in jobs without discrimination; 2) expected costs of relief (financial and other); 3) resources which are used to file suit rather than pursue other jobs. When these costs exceed the expected benefits, whether considered jointly or severally, it may be rational that a woman filer would be reluctant to seek redress through litigation.

The work of Hirschman suggests a concept called "voice" which can be viewed as another way of conceptualizing the process of filing a complaint.[8] Hirschman focuses on the relationship between the employee and the organization. He states that a dissatisfied employee will exercise one of three options: 1) to exercise voice by filing; 2) to exit the employment situation and perhaps not file; and 3) to remain in the organization and perhaps feel victimized, but not file. It has been suggested that the latter action creates an alienated and disgruntled employee.

Hirschman's work would lead us to the conclusion that a critical factor in the decision to file is the nature of the individual's perception of her employer and of her union. This perception dictates which of the three responses, either exit, voice or loyalty, the employee will make when faced with a discrimination dispute. If filing can be conceptualized as registering "voice" outside the existing contractual grievance arbitration provision, the factors which are relevant to filing are: grievance satisfaction, the number of grievances filed, the perception of union democracy, and the amount of union activity. If a member is dissatisfied or views the union as undemocratic, the response of filing might lead to greater control over union processes by women. Thus unions may become more responsive to the needs of women as the composition of the workforce changes and females increasingly participate in the workplace.[9]

II. Legal and Historical Status of Women

In order to appreciate the deliberative process that a risk-seeker must go through, there must be some basic understanding of the legal and historical status of women. Such an understanding may explain why women do not file complaints as frequently as they otherwise might have reason to do. Historically, women have not fared well in the law. This reflects society's perception of the proper place of women. It is equally important to note that the external law provides the parameters within which labor and management negotiate and administer their labor agreements.[10] As will be shown, these external laws often served as a negative

7 *Id.* at 184. Gleason's term for risk seeker was "risk preferrer."

8 Hirschman, *Exit, Voice and Loyalty*, in THE CULTURE OF BUREAUCRACY 209-17 (C. Peters & M. Nelson eds. 1979).

9 *See* Schwartz & Hoyman, *Changing of the Guard: The New American Labor Leader*, 473 ANNALS 64 (1984). E. GLASSBERG, N. BADEN & K. GERSTEL, ABSENT FROM THE AGENDA: A REPORT ON THE ROLE OF WOMEN IN AMERICAN UNIONS (1980) (pub. by Coalition of Labor Union Women).

10 *See, e.g.*, Aaron, *Legal Framework of Industrial Relations*, in THE NEXT TWENTY-FIVE YEARS OF

impetus for filing a charge.

Historically, the public laws permitted employers and unions to treat female employees differently from their male counterparts. As a consequence, this lawful form of sex-based discrimination became an integral part of the "law of the shop" and industry custom.[11] This was particularly true where state protective legislation was enacted. Notwithstanding this accepted form of unequal, and now unlawful treatment, grievances as well as suits and charges were filed by women union members challenging the propriety of employers' decisions which allegedly discriminated on the basis of sex. Women are prone not to seek redress because issues which were historically seen as women's issues have not been accepted as mainstream industrial relations or collective bargaining issues (day care, etc.). The difference between the two sexes has been extolled beginning with the founding fathers of our country.

A. *Constitutional Basis of Discrimination*

This country's early acceptance of the differences between the sexes was reflected by Thomas Jefferson when he stated:

> Were our state a pure democracy there would still be excluded from our deliberations women, who, to prevent deprivation of morals and ambiguity of issues, should not mix promiscuously in gatherings of men.[12]

This concept, which inherently advances the natural subordination of women to men, was supported by both the legislature and the press. The argument goes that this inferior status of women was their natural state and further that women would not be happy in any other state.[13]

This notion was reinforced by the passage and existence of state protective legislation. In 1852, the state of Ohio passed the first protective labor law in the country.[14] Although these early protective labor laws had been initially intended to protect women in the workplace, in many instances they served to imprison and discriminate against women in regard to employment opportunities. Essentially, these protective labor laws placed restrictions or prohibitions on employing women in particular jobs[15] or restricted the number of hours per day or days per week

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INDUSTRIAL RELATIONS, TWENTY-FIFTH ANNUAL VOLUME (G. Somers ed. 1973); Brown, *Legalism and Industrial Relations in the United States*, 23 INDUS. REL. RES. A. PROC. 2, 2-10 (1970); Smith, *The Impact on Collective Bargaining of Employment Opportunity Remedies*, 28 INDUS. & LAB. REL. REV., 376-94 (1975).

11 Feller, *The Impact of External Law Upon Labor Arbitration*, in THE FUTURE OF LABOR ARBITRATION IN AMERICA, 83 (J. Correge, V. Hughes & M. Stone eds. 1976); Edwards, *Labor Arbitration at the Crossroads: The 'Common Law of the Shop' v. External Law*, 32 ARB. J. 65 (1977).

12 K. DAVIDSON, R. GINSBURG, & H. KAY, SEX BASED DISCRIMINATION: TEXT, CASES AND MATERIALS 2 (1974) (quoting M. GRUBERG, WOMEN IN AMERICAN POLITICS 4 (1968)).

13 How did woman first become subject to man as she now is all over the world? By her nature, her sex, just as the negro, is and always will be, to the end of time, inferior to the white race, and, therefore, doomed to subjection; but happier than she would be in any other condition, just because it is the law of her nature. The women themselves would not have this law reversed.

Id. (quoting KRADITOR, UP FROM THE PEDESTAL: SELECTED WRITINGS IN THE HISTORY OF AMERICAN FEMINISM 190 (1968)).

14 L. KANOWITZ, WOMEN AND THE LAW: THE UNFINISHED REVOLUTION (1974).

15 *See generally id.* at 149-196.

a woman could work.[16] The laws also placed restrictions on the amount of weight a woman was permitted to lift. Adherence to these laws contributed greatly to what soon became termed "male jobs" and "female jobs."[17] This led to what is, stated in contemporary terms, occupational segregation. Of course, one manifestation or consequence of occupational segregation is wage inequity and the attendant issue of comparable worth.

This underlying societal and legal attitude of protecting or precluding women from employment in certain jobs and occupations was even extended, ironically, to the legal profession. In *Bradwell v. State*,[18] the Supreme Court held that a woman could constitutionally be denied a license to practice law on the sole grounds of her sex. Justice Bradley's concurring decision in *Bradwell* further illustrates the underlying protective but discriminatory attitude of the courts and society.

> The paramount destiny and mission of women are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things, and cannot be based upon exceptional cases.[19]

Notwithstanding the adoption of the Fourteenth Amendment,[20] the judiciary, with few exceptions, accorded great deference to sex-based discriminatory laws. In 1908, the Supreme Court rendered its landmark decision in *Muller v. Oregon*.[21] The issue in this case was the constitutionality of an Oregon statute prohibiting the employment of women "in any mechanical establishment, or factory, or laundry"[22] for more than ten hours per day. In upholding the Oregon statute, Justice Brewer speaking for the Court, reiterated the stereotype of women expressed by the Court in *Bradwell*.[23] Although the reasoning of Justice Brewer was more sophisticated than that of Justice Bradley in *Bradwell*, the underlying thesis remained the same. As Justice Brewer saw it, since women were in a class by themselves, they deserved protective legislation. He

16 *Id.*

17 *See, e.g.*, J. BAER, THE CHAINS OF PROTECTION: THE JUDICIAL RESPONSE TO WOMEN'S LABOR LEGISLATION (1978).

18 83 U.S. (16 Wall.) 130 (1872). The Court also invoked the common law contractual disabilities of married women and the difficulties clients might have in enforcing contracts with a married woman attorney as an additional reason for upholding the state court's barring of women from the practice of law. *See also In re* Lockwood, 154 U.S. 116 (1894), reaffirming the principle of the *Bradwell* case.

19 83 U.S. (16 Wall.) at 139-42.

20 The Fourteenth Amendment provides in relevant part that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, 1.

21 208 U.S. 412 (1908).

22 *Id.* at 416.

23 Specifically, Justice Brewer stated:

> The two sexes differ in structure of body, in the functions to be performed by each, in the amount of physical strength, in the capacity for long-continued labor, particularly when done standing, the influence of vigorous health upon the future well-being of the race, the self-reliance which enables one to assert full rights, and in the capacity to maintain the struggle for subsistence. This difference justifies a difference in legislation, and upholds that which is designed to compensate for some of the burdens which rest upon her.

Id. at 422-23.

reasoned that since such legislation was not necessary for men, it therefore was not unlawful to have such protective or restrictive legislation applicable solely to women.[24]

From a contemporary perspective, *Muller* has been described as a "roadblock to the full equality of women."[25] However, at the time the court rendered this decision, it was generally regarded in a favorable light.[26] First, it may be argued that *Muller* was one of the initial intrusions of the government into the right of contract between an employer and an employee. This decision subsequently formed the legal and philosophical basis for further government regulation of industrial relations. Second, in the aftermath of *Muller*, state statutes restricting the number of hours women were permitted to work were consistently upheld.[27] Third, in addition to fostering the further promulgation of state protective laws, *Muller* has established the principle that "sex is a valid basis for classification." The *Muller* rationale had often been applied without regard to the purpose of the statute in question or the reasonableness of the relationship between that purpose and the sex-based classification.[28]

Although new constitutional standards have since evolved to test the validity of the *Muller* principle, these views persisted even through World War II. Berger contends they still persist.[29] Even now claims of gender discrimination based upon the Equal Protection Clause of the Fourteenth Amendment are afforded only heightened scrutiny.[30]

The impact of *Muller* is evidenced by the fact that a woman was a

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24 *Id.* at 421-22. The Supreme Court had also upheld a number of state protective laws on the general ground that sex is a reasonable basis for classification, although in each instance factors other than the mere sex of the protected employees were present. *See, e.g.*, West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937); Radice v. New York, 264 U.S. 292 (1924); Bosley v. McLaughlin, 236 U.S. 385 (1915). *Cf.* Lochner v. New York, 198 U.S. 45 (1905) (Supreme Court invalidated a New York law—which provided that no worker, male or female, could be required or permitted to work in bakeries more than 60 hours in a week or ten hours in a day). The Court in *Muller* observed:

> [t]hough limitations upon personal and contractual rights may be removed by legislation, there is that in her disposition and habits of life which will operate against a full assertion of those rights . . . . Differentiated by these matters from the other sex, she is properly placed in a class by herself, and legislation designed for her protection may be sustained, even when like legislation is not necessary for men, and could not be sustained. It is impossible to close one's eyes to the fact that she still looks to her brother and depends upon him. Even though all restrictions on political, personal, and contractual rights were taken away, and she stood, so far as statutes are concerned, upon an absolutely equal plane with him, it would still be true that she is so constituted that she will rest upon and look to him for protection.

Muller, 208 U.S. at 422.

25 Murray, *The Rights of Women*, in THE RIGHTS OF AMERICANS 525 (N. Dorsen ed. 1972).

26 *See* Case Comment, *Regulations of Conditions of Employment of Women: A Critique of* Muller v. Oregon, 13 B. U. L. REV. 276 (1933).

27 K. DAVIDSON, *supra* note 12, at 15.

28 Although Muller was concerned with protective labor legislation based upon the physical differences between the sexes, it has been cited in cases upholding the exclusion of women from juries, differential treatment in licensing various occupations and exclusion of women from state supported colleges. *See* Quong Wing v. Kirkendall, 223 U.S. 59, 63 (1912); Commonwealth v. Welosky, 276 Mass. 398, 414, 177 N.E. 656, 664 (1931), *cert. denied*, 284 U.S. 684 (1932) (Jury exclusion); People v. Case, 153 Mich. 98, 101, 116 N.W. 558, 560 (1908); State v. Hunter, 208 Ore. 282, 288, 300 P.2d 455, 458 (1956) (licensing occupations); Allred v. Heaton, 336 S.W.2d 251 (Tex. Civ. App.), *cert. denied*, 364 U.S. 517 (1960); Heaton v. Bristol, 317 S.W.2d 86 (Tex. Civ. App. 1958), *cert. denied*, 359 U.S. 230 (1959).

29 M. BERGER, *supra*, note 4, at 16-34.

30 Craig v. Boren, 429 U.S. 190 (1976); Frontiero v. Richardson, 411 U.S. 677 (1973).

complainant in only one of several cases subsequent to *Muller* that challenged the validity of restrictive labor laws.[31] Arbitrators initially applied the less rigid evidentiary criterion which parallels the "any rational basis test" applied in *Muller* with respect to sex discrimination claims. Thus, the impact of *Muller* restricted a woman's recourse for discrimination through the grievance arbitration mechanism as well as through the courts.

B. *World War II and the Relaxation of State Protective Labor Laws*

Due to the exigencies and the labor shortage caused by World War II, women, blacks, and other minorities were permitted to work in occupations from which they were previously excluded. In order to facilitate the employment of women in these positions, the government relaxed the various applicable state protective labor laws.[32] In addition, the National War Labor Board fostered employment and equal treatment of women by establishing a nondiscrimination policy.[33] In the subsequent decisions of the National War Labor Board, sex-based discrimination claims became subject to the grievance arbitration procedure, thus making "women's issues" into collective bargaining issues. The recognition of sex-based discrimination claims as grievable disputes was the reason for the numerous sex-based arbitration cases which arose during the post-war reconversion period. However, in order for an individual to pursue such cases, consideration often was given to such external public laws as the numerous state protective labor laws. These laws, as previously argued, served to classify women as a group and thereby were used as the basis to deny individual claimants what would otherwise be their rights.

C. *Post-World War II and the Arbitration of Sex-Based Discrimination Grievances: 1945-1964*

Subsequent to the conclusion of World War II and the return of military personnel, state protective labor laws were reinstated.[34] This gave rise to a rash of sex-based discrimination grievances which were ultimately submitted to arbitration.

One factor influencing a large number of women to file these cases is

31 Bosley v. McLaughlin, 236 U.S. 385 (1915). In *Bosley* a woman pharmacist and hospital trustees unsuccessfully challenged, on due process and equal protection grounds, a California statute prohibiting employment of women pharmacists, student nurses, and other female hospital employees—but not regular nurses—for more than 8 hours per day or 48 hours per week. In all other cases, as in *Muller*, the unsuccessful constitutional challenges were made solely by employers charged with violating statutes regulating hours of work for women. *See, e.g.*, Miller v. Wison, 236 U.S. 373 (1915) (8 hour day, 48 hour week); Hawley v. Walker, 232 U.S. 718 (1914) (per curiam) (10 hour day, 54 hour week). In Bunting v. Oregon, 243 U.S. 426 (1917), the Court upheld hours legislation for both sexes. But seven years later, it again upheld regulation for women only. Radice v. New York, 264 U.S. 292 (1924). K. DAVIDSON, *supra* note 12, at 15.

32 L. Stallworth, The Arbitration of Discrimination Grievances: An Examination into the Treatment of Sex and Race Based Discrimination Grievances by Arbitrators Since World War II 106 (Ph.D. dissertation, Cornell University, 1980).

33 General Order No. 16 was adopted on November 24, 1942, and amended on January 3, 1944. *See* 2 U.S. NAT'L WAR LAB. BD., THE TERMINATION REP. 191 (1947).

34 Stallworth, *supra* note 32.

found in the resentment of those working women who lost their jobs in the higher paying manufacturing industries after the war. As one New York State Department of Labor study found "only one out of seventy-three women who previous to the war were household maids, cooks, or waitresses expressed the wish to go back to her job."[35] Rather, they wished to retain their jobs in manufacturing. The changes in attitudes and standards invariably placed women in direct competition with the servicemen who were returning to their former jobs. Women turned to arbitration as a means of redress for their sex-based claims.

One of the key issues in these cases is what criteria to apply in determining impermissible sex-based discrimination. One of the early reported arbitral decisions addressing this conflict between applicable contract provisions and state protective legislation was *Ford Motor Co.*[36] This case involved the contractual bumping rights of a female employee. Arbitrator Harry Shulman noted the very difficult problem of the resistance of males to the entry of women into exclusively male plants. The men were "bumped into" heavier jobs to make way for the women in the lighter jobs. Although noting this problem, Shulman found that "no significant differentiation can be made between employees whose inability to do the job is due to legal prohibitions and those whose inability is due to physical incapacity."[37] Thus, Shulman denied the grievance on the general legal basis that females, as a class, lack the ability to do the job for which the individual was otherwise eligible.

In subsequent cases, other arbitrators, like Shulman, adhered to the principle that the existence of legal limitations on the work which women could do created a "legal class disability." In adhering to this principle, arbitrators were in effect adopting the "any rational basis test" as pronounced in *Muller v. Oregon*. This adherence to *Muller* served to exclude women from many employment opportunities and permitted the discriminatory treatment of women in the workplace. Given this historical fact, one can understand why a woman would perceive the filing of a claim to be futile.

III. The Feller Thesis: The Evolution of Employee-Employer Relations Law

After *Muller* and World War II, there has been a noticeable shift in both the substance and the emphasis of the industrial relations law.[38] A prime example of substantive change is the Equal Pay Act of 1963[39] and Title VII of the Civil Rights Act of 1964.[40] David E. Feller has suggested that because such laws focus on the legal relationship and responsibilities

35 *Women in Industry: Will Prewar Domestic Workers Return?*, MONTHLY LAB. REV. 930 (1946).

36 Ford Motor Co., 1 Lab. Arb. (BNA) 462 (1945) (Shulman, Arb.). For an early article on the arbitration of sex-based discrimination grievances, *see* McKelvey, *Sex and the Single Arbitrator*, INDUS. LAB. REL. REV., 335-54 (1971). And for a more extensive examination of the arbitration of discrimination grievances *see*, Stallworth, *supra* note 32.

37 *Ford Motor Co.*, at 464.

38 For a discussion of the role of blacks in unions and their equal rights under NLRA before the Civil Rights Act, *see* H. HILL, BLACK LABOR AND THE AMERICAN LEGAL SYSTEM 48 (1977).

39 29 U.S.C. § 206(d) (1982).

40 42 U.S.C. §§ 2000e-1-17 (1982).

between the individual employee and the employer, a shift has occurred in the emphasis of industrial relations law.[41] Feller has termed this shift as the "evolution of employee-employer relations" law.[42]

There have been several very clear results of these laws. First, they give the individual worker a statutory cause of action which is independent of his or her union and the contractual labor agreement. Second, the judiciary in recent years has placed an unprecedented emphasis on the individual worker's right in the workplace. The growing body of duty of fair representation court cases is a prime example of this fact. Third, the National Labor Relations Board has become more stringent in applying its deferral to arbitration policy under *Spielberg* and *Collyer*,[43] where the individual's statutory rights are a concern. The Board and the courts have similarly liberalized their policies in cases involving worker protected concerted activities. Fourth, other commentators, such as Feller, have averred, that the evolution of employee-employer relations law has led to the "end of the glory days of arbitration"[44]—the favored means for resolving work-related disputes.

In the wake of this era there developed a new breed of worker—the litigious worker.[45] The development of this legal trend, however, does not begin to explain why an individual worker, particularly a woman worker, would become a risk seeker.

IV. Women in the Workforce

A. *Economic Status*

In general, the changes suggested by Feller may have had a radical impact since sex has become a protected class.[46] Women's role in the labor force has been changing dramatically in recent years. First, more women are entering the workforce. In terms of the increase in the civilian labor force in the last decade, women accounted for nearly three-fifths of the increase.[47] Second, contrary to a prevalent myth that women work only for "pin money", most women are working because they must. Of the women in the workforce in 1979, two-thirds were single, divorced,

41 *See* Feller, *supra* note 11, at 83-112.

42 This shift was created, in part, by federal statutory rights. *See, e.g.*, Title VII; Occupational Safety and Health Act, 29 U.S.C. § 651 (1982); Labor Management Relations Act, 29 U.S.C. § 151-62 (1982); Fair Labor Standards Act, 29 U.S.C. § 202 (1982). *See also* Barrentine v. Arkansas-Best Freight Sys. Inc., 450 U.S. 728 (1981).

43 Collyer Insulted Wire, 192 N.L.R.B. 837 (1971) and Spielberg Mfg. Co., 112 N.L.R.B. 1080 (1955). *Cf.* General Am. Transp. Corp., 228 N.L.R.B. 808 (1977); Roy Robinson, Inc., 228 N.L.R.B. 828 (1977) (The Board modified Collyer so as to not apply to claims under §§ 8(a)(1), 8(a)(1)(a), and 8(b)(2)). *See also* United Technologies Corp., 268 N.L.R.B. 557 (1984); Olin Corp., 268 N.L.R.B. 573 (1984); Suburban Motor Freight, Inc., 247 N.L.R.B. 146 (1980).

44 Feller, *Arbitration: The Days of Its Glory Are Numbered*, 2 INDUS. REL. L. J. 97-130 (1977).

45 *See, e.g.*, Hoyman & Stallworth, *Who Files Suits and Why: An Empirical Portrait of the Litigious Worker*, 1981 U. ILL. L. REV. 115.

46 Craig v. Boren, 429 U.S. 190 (1976); Frontiero v. Richardson, 411 U.S. 677 (1973). Blumrosen, *Strangers No More: All Workers are Entitled to "Just Cause" Protection Under Title VII*, 2 INDUS. REL. L. J. 519 (1978).

47 About 43 million women were in the labor force in 1979, composing more than two-fifths of all workers. Sixty percent of all women between 18 and 64 worked in 1979, compared to 88% of the men. Of all women 16 years and older, 51% of them worked. *See* TWENTY FACTS, *supra* Note 3, at 1.

widowed or separated or had husbands who earned less than ten thousand dollars.[48] Consequently, their economic stake in filing complaints is greatly increased.[49] Also, the number of women with a dual role—"worker and mother"—has increased. There are now more than ten times as many working mothers as there were immediately before World War II, although there are only three times as many working women.[50] Notwithstanding this increase in labor force participation, equality in the workforce has not been achieved. There is still a great amount of occupational segregation. In 1983, women formed 19.6% of the highest paid workers and 96% of the lowest paid workers as indicated by weekly earnings.[51] Although opinions differ on whether occupational segregation has decreased, the fact remains that many women still work in female only jobs.[52]

Much attention has been paid in the popular press to the gains of females. It is true that women are making gains in absolute terms. There are gains in terms of aggregate employment and in terms of entry into the previously all-male professions. However, it is still clear that the wage gap between males and females is large and that occupational segregation persists.[53]

These disparities suggest that current legislation is not adequate to deal with the problems of the wage gap and occupational segregation between men and women. There is an alternative explanation for these differences. Women do not utilize current legal remedies. Under current schemes, filing may not occur automatically. Women workers must initiate the remedial process by filing complaints. Several factors influence women not to file complaints. These factors, examined below, may explain the disparity between men and women in the workplace.

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48 *Id.*

49 The number of women who headed households increased by 8.3 million compared to a decrease among men who were household heads from 1970 to 1983. U.S. DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES, 47 (1985) [hereinafter STATISTICAL ABSTRACT].

50 In 1979, 55% of all mothers with children under 18 years (16.6 million) were in the labor force. Of the mothers with preschool children, 55% were working. Therefore, the issues facing working women are sometimes complicated by their status as working parents. *See* TWENTY FACTS, *supra* note 3, at 1; U.S. DEPARTMENT OF LABOR BUREAU OF LABOR STATISTICS, HANDBOOK OF LABOR STATISTICS 125 (1983).

51 The highest paid workers were lawyers and judges and earned $650 per week. The lowest paid were domestic and service workers earning $111 per week. Dobbeleare, *The Wage Gap and Comparable Worth*, 1 J. APPLIED BUS. RES. 41-48 (1985). *See also*, Mellor, *Weekly Earnings in 1983: A Look At More Than 200 Occupations*, 108 MONTHLY LAB. REV. 54 (1985).

52 Women held 80% of all clerical positions in 1979 but only 6% of all craft positions. They were 63% of retail sales workers but only 25% of nonfarm managers and administrators. TWENTY FACTS, *supra* note 3, at 3; EQUALITY FOR MINORITIES, *supra*, note 3.

53 The wage gap between men and women was 57.3% in 1976, 58.6% in 1980 and 61.6% in 1983. Dobbeleare, *supra* note 51. Dobbeleare suggests that it is not so much the type of work done by females but their numerical concentration in some sectors which depresses their earnings. For a discussion of different explanations of this phenomenon see M. BERGER *supra*, note 4, at 13. The average woman worker earns only about three-fifths of what a man does. Fully employed women high school graduates (with no college) have less income on the average than fully employed men who had not completed elementary school, $9,769 and $10,474 respectively, in 1978. Women with 4 years of college also had less income than men with only an 8th grade education—$12,347 and $12,965, respectively. TWENTY FACTS, *supra* note 3, at 2.

B. *Women in Unions*

Given the status of women in the workforce, litigation may be a possible route for them to improve their lot. One factor which may determine whether a female union member files with the Equal Employment Opportunity Commission (EEOC) or the National Labor Relations Board (NLRB) is how well the union represents its female constituents. Studies have found that the percentage of women union members is increasing, while the overall percentage of the workforce which is unionized is declining.[54] However, the proportionate number of women on international union executive boards is not keeping pace with the number of women members.[55] This underrepresentation of women may explain why unions have typically failed to establish a formal agenda for women and leadership development training aimed specifically at women.[56] There are notable exceptions, such as the male leadership of the International Union of Electrical Workers who championed the litigation of pregnancy discrimination cases under the direction of its then General Counsel Winn Newman. Unions may improve the representation of women through collective bargaining[57] because issues such as comparable worth or pay equity can be settled at the table, as well as in the courtroom. Thus, it would be useful to determine whether the satisfaction of female union members with the bargaining process is different for those who file than for those who do not. Similarly, in terms of a union's activity in other arenas, a union member's perception of fairness and effectiveness of the grievance process is important. Also, the overall efficacy a union member feels she has may be important. Finally, the amount of control one feels she has over local union decisions may prove to be an important predictor of filing.

One recent development which supplements the efforts of local and international unions to assimilate women into their structure is the establishment of a separate women unionist organization—the Coalition of Labor Union Women (CLUW).[58] CLUW has acted as a pressure group within certain international unions and within the AFL-CIO. CLUW has been credited for successfully gaining the AFL-CIO's support for the rat-

54 R. RATNER & A. COOK, WOMEN, UNIONS, AND EQUAL EMPLOYMENT OPPORTUNITY 1, 10 (1981) (working paper no. 3, Center for Women in Government, Albany, N.Y.). In 1978 15.4% of total female labor force were members of unions or associations. They made up 24.2% of all union members and an even higher proportion—approximately 41.9%—of the members in large unions with 50,000 or more union members. *Id.* at 1. The authors maintain that this is due not to a concerted effort on the part of unions to organize women, but it is due to the demographic composition of newly unionized industries. *Id.* at 10.

55 E. GLASSBERG, *supra* note 9, at 13-14; RATNER & COOK, *supra* note 54, at 7.

56 E. GLASSBERG, *supra* note 9, at 13-14. However, the question of which should come first—women leadership or women's programming—remains an open question.

57 Ratner and Cook argue the absence of women in leadership including those representing the union in collective bargaining has direct consequence for the priority attached to bargaining demands. RATNER & COOK, *supra* note 54, at 30. The evidence is mixed on the improvement of female union wages. It appears that in terms of absolute wages women union members do better than nonunion women but not as well as union men.

58 Coalition of Labor Union Women has as its purpose increasing the power of women within unions. It is trying to do this by organizing the unorganized women, by increasing the political representation of women within unions, by lobbying for women's issues and by educating and developing new female union leaders.

ification of the Equal Rights Amendment.[59] Furthermore, in an attempt to recognize the unique status of women, AFL-CIO President, Lane Kirkland, appointed Joyce Miller, President of CLUW, as the first woman on the AFL-CIO Executive Board[60] in 1980.

It is worth noting that the role of unions with regard to their potential control over this area may have been exaggerated. As Ratner and Cook point out, there are barriers to women's equal employment over which unions have little control, particularly in the hiring area.[61]

C. *Special Problems of Women: Double and Compound Discrimination*

One of the problems that women face is that they may be members of two protected classes simultaneously. Black women face discrimination in ways that black males and white females do not. This has been discussed by Shoben who has developed two concepts to describe the problem.[62] The first is double discrimination and the second concept is compound discrimination. Double discrimination refers to the fact that a person belongs to two different groups both of which are adversely affected by an employer's discriminatory employment practice. For example, the employer has two selection devices, one of which discriminates against blacks and the other against women. Thus the black woman is a victim of double discrimination. The concept of compound discrimination refers to a type of discrimination in which the practice affects the black woman but not blacks as a group or females as a group. Women may be members of double categories or compound categories such as black women or old women.[63] Thus, there are legal arguments for covering black women, as a class, under Title VII and treating them the same as the white male group is treated in reverse discrimination cases.[64]

Black women typically have poor mobility and scarce resources with which to file a suit. They have the highest unemployment rate of any group—39.2% as opposed to 3.6% unemployment for white males.[65] Yet, there is an increasingly large contingent of black women in the workforce[66] and an increasingly large number of black female heads of households.[67] Thus, women who are subject to double or compound

59 Hoyman, *Working Women: The Potential of Unionization and Collective Action*, in WOMEN'S STUD. INT'L F. (forthcoming).

60 There is now another woman, Barbara Hutchinson of AFGE, who has joined the board.

61 Ratner and Cook suggest that the power of unions has been exaggerated. Furthermore only one-fourth of the workforce is unionized and unions can be of little help to nonunion workers.

62 Shoben, *Compound Discrimination: The Interaction of Race and Sex in Employment Discrimination*, 55 N.Y.U. L. REV. 793 (1980).

63 Shoben argues that the double and compound discrimination are unlawful under Title VII. Thus, Shoben concludes that, provided the number of categories is limited to two, there should be no problem including compound categories as protected categories under Title VII. (Shoben recognizes that there may be problems with using the compound category as representative in class action cases.).

64 Shoben, *supra* note 62.

65 TWENTY FACTS, *supra* note 3, at 2.

66 *Id.*

67 A greater proportion of women are heads of households now than in 1970 and nearly one third of all households are headed by women. Black families were eight times as likely to be headed by women in 1983 as compared with white families. Thus, this group of women may face two obstacles. They may be victims of sex discrimination but may not have the economic wherewithal to

discrimination face a greater economic risk by filing a suit.

V. An Empirical Study of Factors Influencing Women to File Complaints

This is a study of factors associated with suit filing by women. Women have several legal bases upon which to seek remedies for discrimination. However, women face considerable costs attendant to filing which are not suffered by men. This raises the question central to this article: Do women file more often or less often than men?

The second question which is asked by this article is what factors, including the gender of the person, might explain differences in the rate of filing. The other variables besides gender which are examined are: race, educational level, age, ideology, seniority, salary, single parent status, the satisfaction with the grievance process, the amount of grievance activity (the number of grievances filed), the perception of union democracy, and the amount of union activity. Of these variables, sex is one of the most important to this article. Sex refers to the gender of the union members, rather than the basis of the complaint. It is expected that females will file at a greater rate than males. This may be due to the recent increase in legal remedies available to women and to the wage gap and occupational segregation between men and women.[68] Also, younger subjects, those with higher educational levels, and those with a feminist ideology are likely to file more frequently.[69] Persons with these characteristics may be of particular importance because they reflect the changing attitude of the workforce. These individuals symbolize what has been called "the new breed of workers."[70]

There may be other reasons for the disparity in the rate of filing which are largely economic or "rational." These are suggested by the "stakes hypothesis" which postulates that the higher a person's salary, the greater the likelihood of filing because the person's "stake" in the outcome is greater or because they would stand to lose more by not protecting their rights through filing suit.[71] Similarly, a person with higher seniority would have a greater likelihood of filing.

One characteristic related to economic stakes which may be particularly related to women's filing behavior is the person's status as a single parent. In recent years, there has been a significant increase in the number of single parents. In addition to their responsibilities as wage earners, these individuals have the primary, if not sole, responsibility for

remedy this because of the differential amount of economic risk. *See* STATISTICAL ABSTRACT, *supra* note 49, at 41.

68 This study looks at complaints on the basis of race and sex. In the results reported in the final model the complaints were combined. However, in the preliminary analysis, the two different bases were examined separately.

69 Feminism (or attitude to feminism) is measured originally on a 7 point scale with attitudes varying from "a woman's place is in the home" to "women and men should have an equal role in society." Later, it was collapsed into liberal, moderate and conservative.

70 Address by Edward B. Miller (former chairman of the National Labor Relations Board), *Labor Law Developments in the 1980's*, Chicago Ch. Indus. Rel. Res. A., (April 20, 1980).

71 Hoyman & Stallworth, *Who Files Suits and Why: An Empirical Portrait of the Litigious Worker*, 1981 U. ILL. L. REV. 115. The results of this study partially bear out Miller's thesis.

the parenting and economic support of their children. This phenomenon has become increasingly common given the increase in the divorce rate and the number of women bearing children outside of marriage. Consequently, it would be reasonable to conclude that to these individuals economic security in the form of continued employment is considerably more critical than it might be for the single non-parent or the married parent. Therefore, as with the higher paid employee, it is hypothesized that the single parent, is more inclined to file than other employees.[72]

The immediate environment in which a female finds herself can discourage or encourage her from filing a complaint. Thus, how the woman views her union, the satisfaction she has with the bargaining process, and the amount of satisfaction she has with the grievance process can affect filing.[73] The number of grievances a person files may be a good predictor of the external filing of complaints or suits.[74]

Finally, the way an individual perceives the amount of union democracy may affect filing. There were three ways of measuring the perception of union democracy. The first is a measure of whether the person thinks that it is leaders or members who control decision-making in the local. The second measure is the amount of control the individual person feels he or she has over decision-making in the local. The third measure is one of efficacy, in terms of the expectation of achieving a union office.[75]

A. *Method*

1. Subjects

There were 876 individuals in the sample. They were all members of a variety of local unions across the state of Illinois. All respondents are employed by the same public sector employer.

The sample consists of 336 females or 39.4% of the sample. This is higher than one would have expected. The black female group was extremely well-represented, a full 15.9% of the sample. Overall there were

72 *See generally, Working Women: Joys and Sorrows*, U.S. News and World Rep., January 15, 1979, at 64-74. Researchers have asserted that the workers who are more highly skilled, more secure in their jobs, more ethnically oriented, and more satisfied with their jobs, relative to other workers will tend to participate more often in their unions. *See*, Perline & Lorenz, *Factors Influencing Participation in Trade Union Activities*, 29 AM. J. OF ECON. & SOC. 425, 425-29 (1970). *See also* Spinrad, *Correlates of Trade Union Participation: A Summary of the Literature*, 25 AM. SOC. REV. 237 (1960).

73 The question on grievance satisfaction was: "Overall, how satisfied are you with the way the union has handled your grievances?" Grievance satisfaction was measured on a five point scale from very satisfied to very dissatisfied. The middle category was "neutral." There was also a response called "filed no grievances." There were a large number of individuals who filed no grievances. The question on bargaining satisfaction was: "How satisfied were you with the way the union bargained your last contract?" The response categories constituted a five point scale from very dissatisfied to very satisfied.

74 The authors acknowledge that the exact meaning of filing a grievance is unclear. Sometimes it may reflect an individual complaint. Sometimes there are types of individuals who consistently complain—chronic grievants as it were. Also, in the case that a steward or union president files a grievance on behalf of a member, this can be viewed as a form of union activity, as well as grievance activity.

75 The efficacious union member is one who expects to achieve a local union office and the nonefficacious member is one who does not expect to achieve a local union office. Thus, the measure of efficacy has a specific institutional referent.

588 white union members or 68.3% of the sample and 254 blacks or 29.5% of the sample. Hispanics and Asians were respectively represented by 11 (1.2%) union members and 1 (0.1%) union member in the sample.

It is useful to point out the ways in which the study may differ from a sample of union members in a manufacturing setting. The individuals in this sample probably have a higher overall educational level than the average industrial worker.[76] Young workers may be slightly underrepresented, compared to the overall industrial population.[77] The sample did not exhibit as great a range in salary as exists in the industrial population as a whole.[78] These are the key ways in which the sample seems atypical.

This study does not have external validity beyond the particular union from which this sample was drawn. However, because many studies of union members and their attitudes do not involve random sampling at all or a sample this large, this study may be useful if judiciously applied. It should be noted that inasmuch as these workers are public sector union members and were in the past required to take an examination as a condition of possible employment, their educational level may not be as representative of the industrial worker in industry as a whole. To the extent this is true, the results may not be able to be generalized.

There is one further comment to make about the quality of this data. That is the absolute number of charges may understate the amount of actual filing activity. Because a number of these suits may be made on a class basis, there may be considerably more activity than the absolute number of charges suggests.

2. Procedure

The data collected for this article was obtained by surveying a randomly selected sample of two thousand union members who are employed by the same employer, but at different sites within the state. The survey was conducted by means of a questionnaire. The response rate was 44.4%.[79] The questionnaire contained detailed questions concerning such factors as the individual's union activity; perception of his or her union; various demographic characteristics (e.g., race, sex, political ideology and efficacy); and the individual's filing activity under Title VII, section 8(b)(1)(a) of the National Labor Relations Act and section 301 of the Labor Management Relations Act.[80] Each subject was asked whether

76 For instance, there are no individuals in the sample with less than seven years of education. In fact, 44% of the sample have some college education or more.

77 For example only 8.2% of the sample are under 26 years of age and a full 45% of the sample are over the age of 46.

78 The lowest salary in this sample was $14,806, excluding hourly employees. The highest paid individual received $21,974. In many cases it was necessary to interpolate the respondent's step and salary. If the respondent gave complete information on his or her grade and his or her title, it was possible to identify his or her step and thus the salary. If the information was so incomplete that it was impossible to determine the steps, the median step is the person's designated grade.

79 Of the 888 completed questionnaries, 12 were eliminated because they were completed by employees who represent management.

80 Labor Management Relations Act, 29 U.S.C. §§ 158(b)(1)(a), 185 (1982).

he or she had filed a grievance, an EEOC charge or suit against the union and/or employer and whether the individual had ever filed a duty of fair representation suit or charge.[81]

B. *Results*

The results indicate that filing is a rare event. Only 63 of 876 people filed suits (or charges). Of the 63 persons 35 were male and 28 were female. There were 91 charges or suits filed since some people filed charges on two bases. Sixty-three complaints were filed on the basis of race and sex, 3 charges were filed on race, sex, and duty of fair representation charges, and 5 charges were filed on race and duty of fair representation charges. Thus, there appears to be litigation of the same complaint in 2 or more fora. Overall there were 37 sex suits, 35 race suits and 19 duty of fair representation suits.[82]

In order to test which variables are significantly related to filing a log linear analysis was used.[83] A log linear analysis is a statistic well-suited to the data at hand because the dependent variable is dichotomous and is not normally distributed; the independent variables are categorial (not interval). The log linear analysis allows the researcher to attribute the increased likelihood of a person filing to a particular independent variable. With this technique, one can make precise probabilistic statements about the relative importance of each of the variables in the model to filing. For example, if a person displays the independent variable of single parent status, he or she is 2.94 times as likely to file than if he or she does not display that independent variable. Combinations of three variables each were examined. Using this procedure, the three best predictors of filing which emerged were: race, union activity and status as a single parent. Thus, these three variables constituted the model. The next question is: What is the relative importance of each variable?

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81 Charges can be brought against the union, the employer, or the union and the employer.

82 One of the assumptions behind this study is that all types of filing are considered to represent the same underlying concept. It may be useful to explain why this is so. As was explained in the beginning of the article, the function of filing, inasmuch as it represents going outside the usual organizational channels, is the same in all cases. Methodological considerations also required considering all suits filed. The extremely small number of each different kind of charge, particularly the duty of fair representation charges, makes it impossible to perform any meaningful statistical analysis of why individuals file suits of a particular kind. Before arriving at the decision to collapse all the filers into one category, a considerable amount of investigation went into discovering whether or not the individual workers who filed race charges differed substantially from those who filed sex charges or those who filed duty of fair representation cases. As a result there is an empirical basis for asserting that all three types of filing are similar or at least that the three kinds of filing do not have signicantly different correlates.

83 A multiple regression could not be used because the dependent variable was dichotomous and was not normally distributed. The dependent variable is dichotomous and does not meet the assumption of normal distribution necessary for the use of multiple regression. There are 63 filers out of 876 cases. Therefore, it was decided that the most appropriate statistical technique to use is log linear analysis. After an analysis of all variables on the simple level was done, they were collapsed from interval or ordinal level variables. A probit run was also done. Due to the risk of empty cells, the method of analysis is confined to testing three variables at a time. The criteria for selecting the three variables for the final model are 1) the consistency and stability of the variables across combinations of the variables and 2) the theoretical meaning of the variable. The three variables were all significant as was the overall equation.

TABLE 1: Odds of Filing by Race, Union Activity and Status as a Single Parent

Race	Union Activity	Single Parent Status?	Suit Filing?[84] No	Yes	Odds[85]
White	Low	No	420	13	.034
White	Low	Yes	12	1	.100
White	High	No	102	13	.118
White	High	Yes	1	1	.342
Non-White	Low	No	152	13	.070
Non-White	Low	Yes	29	5	.206
Non-White	High	No	34	6	.244
Non-White	High	Yes	3	3	.716

Results: Calculation of Improvement in Odds[86]
Single Parent Status = 2.94 = (.100/.034)[87]
Union Activity = 3.47 = (.118/.034)
Race = 2.06 = (.070/.034)

The results are presented in Table 1. For example, if the person is non-white, the odds are 2.06 times greater that he or she will file than if he or she is white. If the person is a union activist, the odds of him or her filing is approximately 3.47 times greater than a nonactivist. If the person is a single parent, his or her odds of filing is 2.94 times greater than a person who is not a single parent. The same improvement in odds exists for single parents whenever one observes the single parent group compared to the non-single parent group, no matter whether one observes non-whites or whites, or union activists or non-activists. In other words, the improvement in odds remains the same when holding the other two variables constant. Once the three best predictors were selected using log linear analysis, the best fitting model containing these variables had to be found.[88]

The model which best describes the data in this case is a model in which there are joint effects of the three variables. In other words, each variable has a significant effect on filing when controlled for the other variables. There were no interactions among the variables. See Table 2.

84 These are the observed frequencies.

85 The odds are calculated on the expected frequencies of the model that fit best.

86 The numbers represent the improvements in odds when it is known with certainty that a person falls in one category, rather than another of that variable, holding the categories of the other two constant. For example, a 2.06 means that if the person is non-White, rather than White, the odds are 2.06 times as high that the person will file a complaint.

87 Each of these calculations of the improvement in odds can be done on any of the four cases in which the single parent status moves from No to Yes. Thus (.342/.118) = 2.94; (.206/.070) = 2.94; (.716/.244) = 2.94. The same is true of all the calculations of odds for all variables. The improvement in odds remains the same when the other two variables are held constant.

88 The best fitting model is the one which best describes the structure among these variables and filing. The fit of a model is determined by a chi-square with a large chi-square indicating a poor fit. In order to determine the preferred model, a hierarchical technique is used. Each higher order model is compared to its respective lower order model. To determine whether a second higher order model is a better fit than the lower order model, the chi-squares of the two models are subtracted to see if the resulting difference is significant. If it is, the second model can be said to be a significant improvement in fit over the lower order model.

TABLE 2: The Possible Models and the Preferred Model

		Degrees of Freedom	Chi-Square
1.	Independence Model (No effect of independent on dependent)	7	32.49
2.	Main Effect of Single Parent Status on Filing	6	23.70
3.	Main Effect of Union Activity on Filing	6	18.01
4.	Main Effect of Race on Filing	6	23.37
5.	Joint Effect of Single Parent Status and Union Activity	5	7.76
6.	Joint Effect of Single Parent Status and Race	5	18.42
7.	Joint Effect of Union Activity and Race	5	8.03
8.	* Joint Effect of Union Activity, Race, and Single Parent Status (Improvement over lower order models at .05 level)	4	2.07
9.	Interactions: Not Reported Because No Added Improvement		

$X^2 = 2.07$ overall probability = .72, df = 1
Main Effect of Single Parent Status = 8.79 (32.49 − 23.70)
Main Effect of Union Activity = 14.48 (32.49 − 18.01)
Main Effect of Race = 9.12 (32.49 − 23.37)
* Preferred Model:
Joint Effect of Union Activity, Race, and Single Parent Status = 2.07 (is a significant improvement over all lower models)

The fact that race emerged as one of the three most important factors is expected. The fact that the gender of the person did not prove important merits explanation.

1. Why gender is not important?

It is worth noting that gender was not significant in its relationship to filing even before controls were added. One possible explanation for its lack of importance is that there is only a small fraction of charges which are filed on the basis of sex. As noted, all types of filing have been collapsed together, because all filing was considered to represent one concept. Thus, it can be argued that the gender of the employee will not influence the filing of race and the duty of fair representation suits to the same degree as it will influence the filing of sex suits. Consequently, it is necessary to consider first what proportion of all charges are charges based on sex. Of the 63 charges, 27 of them, or 40% of the total, are filed on the basis of sex.

To make certain that sex is not important, we may wish to examine sex suits only. After all, it is with this type of charge that the strongest sex effect is expected. Table 3 below, illustrates the proportion of males and females who file sex suits.

TABLE 3: Sex of Respondent as a Predictor of Sex Suits

	Male	Female
Filer	15	12
	3.0%	3.8%
Nonfiler	490	303
	97.0%	96.2%
	100.0%	100.0%

Table 3 indicates that the filing rates of males and females are not significantly different for sex suits. In fact, the pattern is strikingly similar for sex suits as for suits as a whole. Therefore, the composition of the charges does not provide an adequate explanation for the fact that there are no differences in filing by sex of the respondent.

C. *Discussion*

1. Gender

One of the most significant findings of this study is that women do not file more frequently than men. There are several explanations for this result. First of all, men may be filing on behalf of women. In other words, men may be filing complaints but are alleging that the sex discrimination is against females. For instance, advocates such as male union leaders often file on behalf of females.

The second possible explanation is that men are filing sex charges based on the fact that women have received preferential treatment, such as is asserted in "reverse discrimination" suits. It is not possible to test either proposition with the available data. However, one study of the court's findings in sex discrimination cases, particularly those involving a constitutional issue, leads one to believe that this explanation might be more credible than it first appears. This study, by Berger,[89] maintains that, in the bulk of the constitutional cases brought on the basis of sex discrimination, the findings are in favor of males not females. Although the Berger study refers to findings, not to filing, the study suggests that there is more litigation or filing activity based on preferential treatment than was expected under the Civil Rights Act of 1964.[90] The way the survey question was worded, there is no way to discern the effect of "reverse discrimination" filings. The question asked: "Did you ever file a sex discrimination suit against . . . your union?. . . your employer?" The question failed to ask whether the sex discrimination experienced was discrimination against females or against males.

A third possibility is that sex discrimination may occur equally across the sexes or at least that suit filing is equal across sexes. It is not possible, within the constraints of this survey, to empirically validate the thesis that those who file are the parties who have actually experienced discrim-

89 M. BERGER, *supra* note 4.

90 The sex discrimination that the Act intended to eliminate was discrimination against females, not males. However, in McDonald v. Santa Fe Trails Transp. Co., 427 U.S. 273 (1976), the Supreme Court held that white males are also covered under Title VII.

ination and that those who have not filed have not experienced discrimination. However, it is possible that men are filing sex suits on their own behalf. For example, early cases involving the airline industry were filed by males who sought to achieve positions as flight attendants.[91] The dramatic and well-known cases of *Bakke*[92] and *Weber*[93] illustrate the strength of feeling as regards a race discrimination basis for reverse discrimination. If the motivation of white males to file reverse discrimination cases is as strong with sex as it is with race, this would explain the result.

A fourth explanation is that even though women have a legal and an objective basis for filing, women may not perceive any discrimination. If it is the perception of discrimination which is important, rather than the objective reality, then the link between having the objective basis for filing and filing is weak. Perceptions of discrimination may vary with the socialization, age, education, life experiences, and ideology of the person. They are also affected by the historical legal status of women.

A final explanation is that women do experience more discrimination objectively, but they are intimidated or feel that the costs of taking action are too high. Consequently, women do not file as frequently. Based on this survey, this is difficult to investigate. The finding that union activists, who we may assume are not easily intimidated, file more frequently may indirectly support this conclusion.

2. Union Activists

One striking finding of this study is that those who are active in their union file more frequently than those who are not. This was the opposite of what was predicted. It was expected that those who were not active would place a great degree of legitimacy in decisions flowing from union actions, and thus not file outside the union.

These results may be explained by developing an analogy to the literature on political participation. People who are active in the political system share two characteristics with union activists: high interest and high information levels.[94] Thus, these two characteristics would explain why union activists file more frequently than people who are nonactivists.

It is worth noting that the increased filing activity of union activists could be on behalf of a union—as part of a union strategy. Consequently, filing externally could provide the necessary leverage for the union in order to convince the employer to settle claims. Again, because of the limitations of this survey, the intent of the party filing cannot be determined from the survey question.

3. Single Parents

As was predicted, single parents file more frequently than those persons who are not single parents. An explanation may lie in the relative

91 Diaz v. Pan Am. World Airways, Inc., 442 F.2d 385, *cert. denied*, 404 U.S. 950 (1971).

92 Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265 (1978).

93 United Steelworkers of Am. v. Weber, 443 U.S. 193 (1979).

94 S. VERBA & N. NIE, PARTICIPATION IN AMERICA: POLITICAL DEMOCRACY AND SOCIAL EQUALITY (1972). A. CAMPBELL ET AL., THE AMERICAN VOTER (1960).

gain perceived by single parents. The gain obtained through litigation may be of greater value to single parents than those employees who have no dependents or who have other sources of income. Therefore, they are more likely to take the risk of filing a suit. The policy implications of this finding is that unions and employers may want to develop programs, such as day care, to address the needs of this growing group.

The single parents differ substantially from the rest of the sample by sex. Seventy-nine percent of the single parents are female, as compared to 37% of the non-single parents, or 39.4% of the sample as a whole. Also, in terms of race, single parents are disproportionately non-white as compared to the non-single parent group or the sample as a whole. Non-whites composed 74.6% of the single parents as compared to 27.9% of the non-single parents and 27.9% of the sample as a whole.[95]

VII. Conclusions

Very little is known about why people file suits. There are probably two reasons for this: first of all, filing is a rare event. Thus in any general population or sample there will be very few filers, too few for valid comparisons between filers and nonfilers. Secondly, for reasons of confidentiality, lists of filers are hard to obtain. The process of filing a charge (at least with a government agency) is confidential so the names of charging parties or filers generally are not released. Also an examination of EEOC data files is not fruitful because very little demographic and personal information is gathered about the charging parties (filers). This study thus contributes greatly by its valuable data base of filers, drawn from a very large random sample of union members. It allows us a rare chance to compare filers and nonfilers.

The study shows with some certainty that the characteristics of filers and nonfilers are different. The characteristics which are linked with filing are: race, union activity and single parent status. Women do not appear to be filing more than men, even when suits based upon sex discrimination are considered alone.

The demographic characteristics such as race and status as a single parent proved more important to filing than attitudinal characteristics. This finding about the litigiousness of the single parent may have uncovered a significant trend. Given divorce rates and the increasing number

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	Male	Female	Total
Non-single Parents	509	296	805
	63.2%	36.8%	
Single Parents	13	49	62
	21.0%	79.0%	
	White	Non-White	
Non-single Parents	573	222	795
	72.1%	27.9%	
Single Parents	15	44	59
	25.4%	74.6%	

Although the single parents have a different sex and race composition, race-sex interaction did not contribute to the effect of single parent status.

of young unmarried women bearing children, it is expected that this group will continue to increase as a percentage of the total work force.

The litigiousness examined here poses a challenge for the traditional parties of labor and management. This, combined with the proliferation of external laws which serve as the basis of a private cause of action by the individual, has given the individual a potentially new role in the workplace. The findings of this study are particularly significant in that they may assist labor and management in understanding the type of employee who may be more inclined to bypass internal dispute settlement mechanisms and seek redress through external law. The challenge posed to labor, management and the government is to encourage employees to resolve employment-related disputes fairly and equitably without seeking unnecessary external redress. In some instances, this may require labor and management to re-examine their private dispute settlement procedures.

Finally, this study empirically examined the assumption behind much of the U.S. legislation covering individual rights at the workplace. The assumption is that the individuals who need the protection of the law will in fact utilize the legal machinery. The inference from this study is that blacks are exercising their rights (or at least they are filing at a greater rate than whites) but women are not. It may be worth considering some type of enforcement mechanism in the United States which is automatic rather than one initiated by the aggrieved individual. A system similar to European systems, for example, in which wage discrimination is addressed more automatically may be appropriate. Such systems require that employers file much information with the government agency, more than that required under affirmative action policies in the United States. The wage discrepancies are adjusted by the government agency in an aggregate and automatic way, rather than depending on individuals filing to activate the legal machinery.