

## WORKING PAPER SERIES

# Obesity and Discrimination Among U.S. Lawyers

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Working Paper 94 – 10



**Obesity and Discrimination Among U.S. Lawyers**

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Working Paper #94-10

[www.ilr.cornell.edu/cahrs](http://www.ilr.cornell.edu/cahrs)

Draft. Comments welcome, but please do not cite.

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**Abstract**

A recent federal appeals court ruling barred employment bias against the obese. A reconsideration of claims of discrimination against overweight people is therefore in order. This paper examines the effect of being overweight on lawyers' salaries as reported in the 1984 National Lawyer Survey. Using regression models derived from the clinical nutrition literature as well as models based on the lawyers in the sample themselves, we find an effect of being overweight on salary for both men and women attorneys. The effect for women is captured only in models that incorporate more categories of overweight, however. There is also an effect of being short on men's, but not on women's, salaries. We suggest that the discrimination may be based on social perceptions of people deviating from an "ideal" physique. Since this discrimination exists in a group that should "know better" about judging a person by appearance, it is important to examine how widespread this discrimination in fact is.

## Introduction

A recent federal appeals court ruling barred employment bias against the obese (*Cook v. Rhode Island Department of Mental Health, 1993*). "In a society that all too often confuses 'slim' with 'beautiful' or 'good', morbid obesity can present formidable barriers to employment," First Circuit Judge Bruce Selya said in his ruling (*BNA's Employee Relations Weekly, 11/29/93*). As Judge Selya observed, obesity is often represented as a stigma within American society. Persons of both genders overwhelmingly favor the physique of average or moderate build. There is strong dislike for the obese or overweight physique, whereas thin or underweight physiques are viewed mildly unfavorably (Lavrakas, 1975; Lerner & Korn, 1972; Scodel, 1957; Stafferi, 1967; Wiggins, Wiggins, & Conger, 1968).

These preferences could translate into employment discrimination. A few authors have argued that there is insufficient evidence of discrimination against unattractive, and particularly against fat people (DeJong and Kleck, 1986; Quinn, 1978). In the light of the recent federal appeals court ruling that an employer violated the law when it refused to hire an obese individual, however, it is clear that not only is such discrimination occurring, it must be curbed by the high courts.<sup>1</sup>

Selya's observation reminds us that the importance of physical appearance for our daily lives cannot be ignored. From infancy to old age, those people deemed less attractive by social yardsticks are also perceived to be less competent in comparison with those considered attractive (Power et. al. 1982; Lerner & Lerner, 1977; Romano & Bordiery, 1989). The Federal appeals court ruling is likely to lead to the reconsideration of a number of claims, previously denied or ignored, that fat people have been discriminated against. The matter of where discrimination appears is not straightforward, however. This study examined the salaries and personal measurements of respondents to the 1984 National Lawyer Survey. We found that fat lawyers of both genders are in fact paid less than normal or low weight individuals, after allowing for other predictors of salary. We also examined the lawyers' height, another important component of attractiveness that has no bearing on the lawyers' ability to perform their jobs. We considered whether the particular measures used to measure obesity and

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<sup>1</sup> A federal appeals court ruled for the first time that an employer violated the law when it refused to hire an obese individual (*Cook v. Rhode Island Department of Mental Health, Retardation, and Hospitals*). The court violated the 1973 Rehabilitation Act, which prohibits disability discrimination by federally funded entities. The court **rejected** arguments that morbid obesity-- weighing more than twice the optimal weight-- is not a disability because it is a changeable condition within a person's control. The ruling applies also to claims brought under the Americans with Disabilities Act, meaning that private employers could also be liable for discrimination against the obese.

height may be creating some of the effects that have been reported. The choice of cut-off points for obesity and height had important implications for our findings, and we discuss the selection of cut points below.

### **Different Outcomes for Attractive and Unattractive Individuals**

Outcomes generally favor attractive rather than unattractive individuals throughout the lifecycle. Research shows that infants as young as 3 months receive different treatment based on their attractiveness (Langlois, 1982). Mothers rate school-age attractive children as possessing higher academic ability than their less good-looking, but equally competent peers (Lerner and Lerner 1977). Adults assume that good looking children have better personalities, are better behaved, and are more honest (Dion, 1972). High school students rated more attractive instructors as more able teachers (Romano and Bordiery 1989). Others' perceptions of an individual's attractiveness can have an emotional impact on that person, strengthening or weakening the person's self esteem. As a result, a person's attractiveness can affect his or her decisions and behaviors. For example, physically attractive people were more likely to enter college compared to their less attractive counterparts (Clifford and Walster 1973, Canning and Mayer 1966, 1967).

One researcher found that the careers of students who became West Point cadets could be predicted by observers on the basis of a "halo effect" of attractiveness. The cadets whom an independent panel rated most attractive were also considered, by a separate panel, to be those most able to lead, most intelligent, and so on (Mazur, 1984). The cadets' attractiveness ratings also predicted their military rank several years later.

One of the key determinants of attractiveness is an individual's weight, particularly in terms of the ratio of an individual's weight to height (Patzner, 1985). Despite the clear returns to being attractive, and despite the current emphasis on health and fitness in American culture, different researchers have estimated that between 15 and 50 percent of American adults are obese, when obesity is defined as being 20 percent or more above the average body weight for height and sex (Wright and Whitehead, 1987). Females are more likely to be obese than are males by a ratio of 3:2 (Hall and Havassey, 1981).

### **Physical Attractiveness and the Workplace**

Generally, research investigating the effect of physical attractiveness in the workplace suggests that unattractive people fare worse than those perceived as attractive. Laboratory experiments as well as field studies document the hurdles people perceived to be unattractive face in securing jobs and fair treatment. The importance of being perceived as attractive is well

understood at the entry level: A survey showed that college students consider physical attractiveness to be important in securing, retaining, and being promoted 'in a job (cited in Patzer, 1985). Those students with more work experience evaluated these characteristics as more important than did those students with short employment histories, suggesting that the stereotype does not tend to diminish as people become more familiar with the personality and ability of an "unattractive" person. Physical attractiveness has an effect on interviewers' judgments when they assess resumes of applicants for a managerial position (Dipboye, Fromkin, and Willback, 1975).

These concerns about the employees' physical attractiveness affect salaries (which should relate to performance rather than opinion) as well as personal judgments. Hammermesh and Biddle (1993) found that homeliness lowered people's salaries by 7-10 percent in the general population, while comeliness increased the salaries by about 5 percent. Moreover, supporting Wolf's (1991) observation that men's looks may affect their earnings more than women's looks affect theirs, Hammermesh and Biddle (1993) observed that while the homeliest eight percent of women received a five percent salary penalty, the homeliest nine percent of men received a 10 percent salary penalty. The prettiest women received a four- percent salary premium, while the 32 percent of men rated as above average in looks received a five- percent earning premium.

People who see themselves as unattractive because of obesity rather than below average appearance also report discrimination in salaries and employment opportunities (Anon 1982, Louderback 1970). A survey conducted among members of the National Association to Aid Fat Americans found that 51% of the respondents reported employment discrimination (1992). Allon (1982) reported a study of one thousand firms that recruited financial and computer executives. In the fifteen hundred top executive positions, only 9 percent of the males were overweight, compared to 40 percent in the lower executive positions. According to this report, fat males pay a penalty of \$1,000 for every pound that they are overweight.

Field studies also measured the effects of being unattractive on specific job outcomes. In one study, raters perceived overweight people be less desirable employees, less competent, and less productive (Larkin and Fires, 1979). In another study, Ross and Ferris (1981) showed that attractiveness tends to lead to better outcomes in terms of performance evaluation and salary. Frieze, Olson, and Russell (1989) had judges rate the physical attractiveness of MBA graduates on a scale of 1 to 5, where 5 was the most attractive. Each unit of the 5-point attractiveness scale translated into approximately \$2,000 more salary. Among these MBA

graduates, being overweight affected men's salaries significantly, but did not affect women's salaries among managers who were MBA graduates (Frieze et. al, 1990).

Gortmaker et. al. (1993) prospectively examined the relation between overweight among 10,039 adolescents and young adults and their social and economic characteristics and self-esteem seven years later. The overweight subjects were less likely to be married, had completed fewer years of education, and had lower household incomes than the nonoverweight subjects.

### **Height and Discrimination**

Height as a physical attribute has been little studied in research on physical attractiveness (Patzner, 1985). The accepted assumption is that "taller is better", up to a point, with regard to height. Thus, the prejudice goes against those who, according to some societal criterion, are either short or extremely tall (Patzner 1985, Jackson 1992). As does obesity, height may differentially affect males' and females' salary outcomes. Jackson and Ervin (1990) concluded that height has stronger implications for males than for females. However, relatively little research has considered the effects of height on income for women. Most studies have found positive linear relationships between income or occupational status and height for males, but no relationship for women. Five hundred school superintendents evaluating fictitious applicants for a position as a high-school principal evaluated taller applicants of either sex more favorably than shorter applicants (Bonuso, 1983).

One study (Keyes, 1980) found that male MBA graduates who were 6 feet 2 inches tall averaged 12 percent more in pay than those who were shorter than 5 feet, 11 inches. (The pay advantage for above-average academic standing, by contrast, was only 4 percent.) Sales recruiters also had strong biases (Kurtz, 1969). When choosing between two equally qualified candidates, one over 6 feet tall and the other 5 feet, 5 inches, 72 percent of the recruiters chose the taller candidate; 27 percent expressed no preference, and only one-percent chose the shorter applicant.

### **Gender and Appearance**

The different emphases American culture places on physical attractiveness for females -- who are *supposed* to be attractive -- than for males makes it critically important that any investigation of the effects of attractiveness on job outcomes consider gender (Jackson, 1992).

We tend to use terms like "physical attractiveness" and "beauty" more commonly when discussing females than males. The notion of beauty, especially, refers more to females than to males. Males are "handsome" but women are "beautiful", "gorgeous", and so on. Moreover,

women are generally expected to maintain their physical attractiveness at all times on the job - witness the plethora of cosmetics boasting their longevity: 24-hour mascara, long-lasting lip gloss, and the like. Such demands to be attractive create a strain in the day-to-day life of women, who have to wear a mask wherever they go.<sup>2</sup> Wolf (1991) suggested that American women operate in a culture that makes them "slaves" to their appearance. The demands of purchasing and donning flattering clothing, accessories, and cosmetics constitute a third shift in the every day life of women. Men joke that women love to shop for clothes and cosmetics; the women's frequent trips are necessitated by the men's demands that the women appear "attractive".

The greater importance of physical attractiveness for females than for males suggests that there should be a stronger effect in the workplace for deviation from the "standard of attractiveness" for women than for men. Although this seems to be true in general, there are reasons to believe that among professionals specifically, the attitude toward beauty may negatively affect women who deviate too much from the standard. Quinn (1978, cited in Hatfield & Sprecher, 1986) observed a subtle type of discrimination among professional females: obese/overweight and skinny/underweight females were less likely to have jobs that required face-to-face interaction with the public than average weight females.<sup>3</sup>

In the business and professional world the attractive woman has to pay a heavy price for being well endowed by nature (Kaslow and Schwartz, 1978). To date most of the law suits against employers have been on behalf of women who the employer considered "unfeminine" or, in the case of flight attendants or of Bonnie Cook, too heavy (cf. Jackson, 1992; *Cook v. Rhode Island Department of Mental Health*, 1993). Cases involving discrimination against underweight individuals are less common.

### **Hypotheses**

This study considers the two aspects of physical appearance that are most likely to affect males and females differently. While being fat is predicted to affect women's outcomes more than men's, shortness is presumed to affect males more than females. We also consider the effects of different cut-off points for attractiveness on the job outcomes.

These arguments can be restated as hypotheses:

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<sup>2</sup> Female US Marines take classes in appearance: in addition to having their shoes shined and buttons polished like the men, they are also expected to wear lipstick and mascara (C. Willems, 19xx)

<sup>3</sup> It is unclear whether self-selection was involved; however, it seems to be the authors' contention that it is organizational and social bias rather than self-esteem issues that lead to this distribution.



**H1:** There is an effect of being overweight on attorney's salaries.

**H2:** The effect of being overweight on salary is moderated by gender.

**H2a:** Being overweight affects women's salaries more negatively than it affects overweight men's salaries, other things equal.

**H3:** The effect of height on salary is moderated by gender.

**H3a:** Short men are paid less than short women, other things equal.

**H3b:** Tall men are paid more than tall women, other things equal.

We predict that overweight women's salaries will fare badly compared to those of their male counterparts of any weight. Short men will do poorly compared to short women; but tall men will fare better than tall women.

### **Method**

We test thirteen models. In the first three models, we applied a continuous variable based on the relationship of weight to height (BM1,  $\text{weight}/\text{height}^2$ ) of each respondent to the whole sample (Model 1) and then separately to the men and to the women in the sample (Models 2 and 3).

In the following eight models, we compare the log salaries of overweight men to those of other men and overweight women to other women, using different cut-off points (described below) for obesity and thinness. An additional two models (Models 12 and 13) repeat part of the analysis for tall and short individuals.

### **Data**

Our data is drawn from the National Survey of Lawyers' Career Satisfaction, 1984 (Hirsch, 1989). The survey assessed career satisfaction among young lawyers throughout the United States. Hirsch used a systematic random probability survey of three target groups: lawyers 36 years old and older; all remaining non-student members of the American Bar Association; and all lawyers in the non-members files of the ABA. The survey was administered by mail, and nonrespondents were phoned. A shortened version of the questionnaire was administered to either the attorney, or if the attorney could not be contacted, to the secretary. Of the 3018 lawyers originally contacted, 2967 responded, an average response rate across the target groups of 76.9 percent. As in the overall population of attorneys, there were more male than female respondents.

The data included information (generally categorical) on job descriptions, educational background, psychological characteristics, and basic demographics. Other variables pertained

to job setting, job satisfaction, and job stress. Respondents reported their height, weight, and salary range.

### **Determining Who is Overweight**

Most studies attempt to determine a cut-off point beyond which a person is considered overweight. The body mass index (BMI) (weight/height) is one of the most common measures used for this task.<sup>4</sup> BMI is considered to be a better measure than weight alone for predicting health risks.

The cut-off points along the BMI continuum vary among different studies. When calculated on the basis of age, "good weight" is defined as BMI 19-25 for men and women between the ages of 19-34, and between BMI 21-27 for those over 35 years of age. Men and women have exactly the same recommended weights in this calculation (Bray 1992). Frieze et al (1990) separate the men and the women: they use BMI 25 for women and BMI 28 for men.

Using national norms, overweight is considered to be 85th percentile BMI or above; normal weight is between the 50th-75th percentile; and underweight is 20th percentile or below (Cronk & Roache, 1982). Kuczmarski (1992), using these norms, takes the 85th percentile of BMI as a cut point and finds BMI 27.3 for females and BMI 27.8 for males is overweight.

Another approach is to create additional categories for the classification of BMI. Bray (1992) suggests categories BMI 19-25 for good weight, BMI 25-30 moderately overweight, BMI 30-35 overweight, and BMI 35-40 extremely overweight. We classify those who are below BMI 19 as thin.

The criterion chosen directly affects the number of individuals who fall into each group. If we apply the approach that considers males and females both to be overweight at BMI 25 or greater to our sample, we find that 10.5% of the female attorneys and 34% of the male attorneys in the sample are overweight. It seems unreasonable to include 34% of a population in a category of being overweight. Using Bray's (1992) additional categories, we find two of the women in our sample in the two categories above 30 BMI.

These cut-off points were suggested by physicians and clinical nutritionists as appropriate for the population in general. Since many of the effects of being overweight that we are discussing are based on others' perceptions of obesity rather than on actual clinical concerns, we devised a specific measure of being overweight in the context of the work group we are studying. Since being underweight can also create an undesirable status in the

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<sup>4</sup> Waist-to-hip ratio (WHR) is a preferable measure of physical attractiveness, and may affect male's preferences in mate selection (Singh, 1993). However, the measurements are not available for this sample.

workplace (despite its health-related advantages), we include in some of the models measures that control for being underweight. We classify those of both genders who are above the 85th percentile with regard to their BMI as overweight, and those who are below the 15th percentile of BMI as underweight (in contrast to Kuczmarski's (1992) 15th percentile cutoff, this measure is specific to our sample).

### **Dependent and Independent Variables**

The dependent variable is log annual salary as reported by the respondents. The independent variables of interest are different cutoff points of the body mass index and height. The first three models use BMI, the relationship between weight and height as a continuous variable for the whole sample, with no control for gender. The fourth and fifth models used the Frieze et al (1990,1991) cut-off point of BMI 28 for men and BMI 25 for women (FRIEZE 28/25).

Models 6 and 7 used Kuczmarski's (1992) cut-off point. This point is the 85th percentile in the population, BMI 27.8 for men and BMI 27.3 for women (KUCZMARSK 185%).

Models 8 and 9 in Table 3 introduced 5 categories of BMI, based on Bray's estimates: THIN, below BMI 19, BRAY25, between BMI 25-30, BRAY30, between BMI 30-35 and BRAY35, above BMI 35.

The tallest 15th percentile in our sample are classified as TALL15%, and the shortest 15th percentile are classified as SHORT15%.

We also include a set of demographic and personally descriptive variables that may predict wage: time since finishing law school (EXPERIENCE) and time since finishing law school squared, social origin (father held blue collar job -- DAD BLUE COLLAR), the prestige of law school (self-reported in four categories from most to least prestigious. We only control for the highest prestige schools, LAWTOP); graduation rank in terms of the quartile where respondent was placed in the respective law school (again, we only use the highest quartile reported, QTOP); and religious affiliation (JEWISH, CATHOLIC, PROTESTANT). We also included characteristics of the position itself: PARTNER vs. others; GOVERNMENT vs. others; hours worked during the year (omitted from the tables); and size of city in which the law firm is located (CITY SIZE).

We included in all the equations height in inches as a variable. We also include a cut-off point separating tall from the short in the same way that we did for the sample specific BM1 measure.

Table 1: MEANS by GENDER				
	MEN		WOMEN	
	MEANS	STD	MEANS	STD
LOG INCOME	10.51	.51	10.3	.48
EXPERIENCE	5.5	2.8	4.5	2.5
DAD BLUE COLLAR	.20	.40	.16	.37
CATHOLIC	.23	.42	.16	.36
PROTESTANT	.34	.48	.29	.45
JEWISH	.15	.36	.15	.35
PARTNER	.30	.49	.10	.29
GOVERNMENT	.13	.33	.22	.42
CITY SIZE	12.9	1.5	13.3	1.4
HEIGHT	71.0	2.6	64.9	2.8
LAWTOP	.24	.42	.15	.36
QTOP	.48	.50	.43	.49
BMI	24.2	2.6	21.4	2.3
Frieze 28/25	.07	.26	.11	.31
Kuczmariski 85%	.09	.28	.05	.23
THIN	.01	.08	.18	.39
Bray25	.33	.47	.10	.29
Bray30	.02	.13	.006	.08
Bray35	.003	.06	.006	.08

Table 1 presents the means and standard deviations for all our variables. The average BMI is very different for males and females: at 21.4 for females and 24.2 for males, both are very close to the figures presented in Frieze et al (1991). Thus, although the average BMI is within what nutritionists would say is the acceptable weight, men are much closer to the cutoff of BMI 25 than are females. In our subsequent models we use a variety of measures to deal with these differences.

## Results

All models support the hypotheses that there is a negative effect of being overweight on salary, and that the effect is mediated by gender. Models 1 through 7 fail to support the hypothesis that being overweight affects women's salaries more negatively than it affects overweight men's salaries. Models 8 through 10, on the other hand, do support this hypothesis. We discuss these discrepant findings below. Neither of the hypotheses about height were supported.

Models 1 through 3 consider the effects of the continuous variable, BMI, on log salaries. In Model 1, for the entire sample with no control for gender, the BMI coefficient is -.009, significant at the 10% level. Models 2 and 3 divide the sample according to gender. Model 2 considers only the men in the sample: their BMI coefficient is -.014, significant at the 5% level. Model 3 shows there is no statistically significant effect of BMI for women in the

sample. These models suggest that there is a linear relationship between the height-weight association and log income. Contrary to H1a, the effect is mostly due to the men in the sample.

Models 4 and 5 illustrate that the coefficient of FRIEZE 28/25 is negative for both genders (-.10 for women, -.12 for men), reaching significance for men but not for women. The HEIGHT coefficients are positive but small, and significant only for women (coefficient = .02 for women, and .006 for men). The models indicate that men's salaries are negatively affected when their weight exceeds Frieze's 28 BMI cutoff point; but there is no parallel effect for women.

As we expected, EXPERIENCE, EXPERIENCE SQUARED, LAWTOP, CITY SIZE, and GOVERNMENT all had statistically significant effects on salary. Social origin (DAD BLUE COLLAR) was only significant for women, while being CATHOLIC was negatively related to salary only among men.

In general across all the models, social origin negatively affected females' salaries, but not those of males. Law school prestige is also more important in predicting women's than men's wages (LAWTOP coefficient for women, .22, is twice that for men, .10). Being in the top quartile of law school, on the other hand, affects men's log salaries (QTOP = .18) and not women's (QTOP = .5). In addition, being a partner or in private practice does not seem to affect women's wages, whereas these are positively related to men's salaries.

Models 6 and 7 use the KUCZMARSKI85% cutoff. Using these cutoffs, the coefficients are -.12 for women and -.11 for men; only the men's coefficient is statistically significant, at the 10% level. This model suggests that the salaries of overweight males are affected more negatively than the salaries of overweight females.

Table 2

Ordinary Least Square  
Equations for Effects on Log Salary

	Model 1 All	Model 2 Men	Model 3 Women	Model 4 Men	Model 5 Women	Model 6 Men	Model 7 Women
Constant	7.8*** (.30)	8.3*** (.05)	6.9*** (.72)	8.0*** (.47)	7.0*** (.68)	8.0*** (.47)	7.0 (.68)
Experience	.16*** (.02)	.16*** (.02)	.16*** (.04)	.16*** (.02)	.16*** (.04)	.16*** (.02)	.16*** (.04)
Experience Square	-.004*** (.001)	-.005*** (.002)	-.006* (.003)	-.005*** (.002)	-.005 (.003)	-.005*** (.002)	-.006 (.006)
Dad Blue Collar	-.006 (.03)	.02 (.04)	-.13* (.07)	.01 (.04)	-.13* (.07)	.01 (.04)	-.13* (.07)
Catholic	-.06 (.04)	-.09** (.04)	.03 (.08)	-.09** (.04)	.03 (.08)	-.09** (.04)	.02 (.08)
Protestant	-.03 (.03)	-.05 (.04)	.03 (.06)	-.05 (.04)	.04 (.06)	-.05 (.04)	.03 (.06)
Jewish	.001 (.04)	-.03 (.05)	.10 (.08)	-.03 (.05)	.10 (.08)	-.03 (.05)	.10 (.08)
Partner	.17*** (.04)	.18*** (.04)	.08 (.09)	.18*** (.04)	.08 (.09)	.18*** (.04)	.08 (.09)
Government	-.15*** (.04)	-.15*** (.05)	-.13* (.06)	-.15*** (.05)	-.13** (.06)	-.15*** (.05)	-.13** (.06)
City Size	.09*** (.01)	.09*** (.01)	.09*** (.02)	.09*** (.01)	.09*** (.02)	.09*** (.01)	.09*** (.02)
Lawtop	.10*** (.03)	.08** (.04)	.22*** (.07)	.09** (.04)	.22*** (.07)	.08** (.03)	.21*** (.07)
Q top	.15*** (.03)	.18*** (.03)	.05 (.05)	.18*** (.05)	.05 (.05)	.18*** (.05)	.05 (.05)
Height	.01*** (.003)	.006 (.006)	.02* (.009)	.006 (.006)	.02* (.009)	.006 (.006)	.02* (.009)
BMI	-.009* (.005)	-.014** (.06)	-.002 (.008)				
Frieze 28/25				.12** (.06)	-.11 (.08)		
Kuczarski85%						.11* (.06)	-.12 (.12)
R-Square	.52	.50	.63	.50	.63	.50	.63
N	722	569	153	569	153	569	153

p<.01 \*\*\* p<.05 \*\* p<.10\*

Hours worked per year are included in the model.

**Table 3**

**Ordinary Least Squares Equations for Effects on Log Salary**  
(Models 8-11 weight, Models 12,13 height)

	Model 8 Men	Model 9 Women	Model 10 Men	Model 11 Women	Model 12 Men	Model 13 Women
Constant	7.8*** (.47)	7.0*** (.68)	8.0*** (.47)	7.0*** (.68)	8.5*** (.17)	8.1*** (.68)
Experience	.16*** (.02)	.15*** (.04)	.16*** (.02)	.15*** (.04)	.16*** (.02)	.17*** (.04)
Experience Square	-.005*** (.002)	-.005 (.003)	-.005*** (.002)	-.005 (.003)	-.005*** (.002)	-.006* (.003)
Dad Blue Collar	.03 (.04)	-.13* (.07)	.01 (.04)	-.13* (.07)	.007 (.04)	-.15** (.07)
Catholic	-.09** (.04)	.04 (.08)	-.09** (.04)	.03 (.08)	-.09** (.04)	.03 (.08)
Protestant	-.06 (.04)	.04 (.06)	-.04 (.04)	.04 (.06)	-.04 (.04)	.02 (.06)
Jewish	-.04 (.05)	.10 (.08)	-.03 (.05)	.09 (.08)	-.03 (.05)	.11 (.07)
Partner	.18*** (.04)	.08 (.09)	.17*** (.04)	.07 (.09)	.18*** (.04)	.09 (.09)
Gov't	-.14*** (.04)	-.12* (.06)	-.16*** (.05)	-.13** (.06)	-.16*** (.05)	-.13** (.06)
City Size	.09*** (.01)	.09*** (.02)	.09*** (.01)	.09*** (.02)	.09*** (.01)	.09*** (.02)
Lawtop	.09** (.04)	.23*** (.07)	.08** (.04)	.23*** (.07)	.09** (.03)	.19*** (.07)
Q top	.18*** (.03)	.06 (.05)	.18*** (.03)	.05 (.05)	.18*** (.05)	.04 (.05)
Height	.009 (.006)	.02* (.009)	.006 (.006)	.02* (.009)		
Bray25	-.06* (.03)	-.15* (.08)				
Bray30	-.41*** (.11)	-----				
Bray35	-----	-----				
Fat15%			-.09** (.04)	-.12* (.07)		
Thin15%			-.003 (.04)	-.05 (.07)		
Short15%					.06 (.05)	.17** (.08)
Tall15%					-.000 (.04)	.03 (.07)
R-Square	.52	.64	.50	.63	.50	.63
N	722	153	569	153	577	157
<p> <math>p &lt; .01</math> ***     <math>p &lt; .05</math> **     <math>p &lt; .10</math> </p>						

Models 8 and 9 portray a different story. These models consider more categories than the previous regressions, including the effect of being under- as well as over-weight (Bray 1992). The omitted category is the "good" BMI between 19 and 25.

In these models, salaries of moderately overweight female attorneys (BRAY25, BMI 25-30) are negatively influenced by their weight (coefficient = -0.15,  $p < 0.08$ ), while only those male attorneys who are relatively heavier, classified in the BRAY30 category, are paid less (coefficient = -0.41,  $p < 0.0003$ ). According to this model, the most overweight women seem to fare better than those who are moderately overweight (not shown in the model because there are only 2 women in the most overweight category).

These models also examined the effect of being underweight. We see that women who are classified as thin do not "suffer" in terms of their income whereas men who are classified as thin suffer immensely from it. For female attorneys, the THIN coefficient is -0.02, NS; for males, the corresponding coefficient is -0.35, statistically significant at  $p = 0.06$ .

Models 10 and 11 illustrate the finding that being in the highest 15th percentile of BMI among these lawyers negatively affects both men and women (SAMPLE15% -.09,  $p < 0.05$ ; and -.12,  $p < 0.09$ , respectively). In this model, THIN did not have a statistically significant effect for either men or women. These models suggest that the effect of perceptions of obesity may be relative to the particular members of an occupation.

Models 12 and 13 consider both short and tall as attributes that may operate differently on salary. The model operationalizes height in the same way as weight in models 10 and 11. Hypothesis 3 suggested that shortness would affect men's salaries more than women's; instead, we see that being short affects women's salaries negatively and significantly (coefficient for SHORT15% = -0.18,  $p < 0.05$ ), whereas for men, although the coefficient is negative, it is not significant (SHORT15% coefficient = -0.06). Being tall on the other hand is beneficial for women, but not for men. However, for both groups the coefficients for TALL15% are not significant.

## Discussion

The current analyses support the argument that weight, height, and the BMI ratio *can* explain salary outcomes among lawyers. In all the models being overweight has a negative effect, and in models four and six (Table 2), and models eight through eleven (Table 3), the effect becomes statistically significant. The current analysis does not suggest that only obesity has a negative effect; shortness and thinness for men also negatively affect their salaries. For women, shortness as well as obesity can negatively affect their salaries. These results confirm



the Gortmaker et. al. (1993) and Hammermesh and Biddle (1993) findings of lower income for overweight individuals, and extend them to a specific band of American society, who, it could be argued, should "know better".

In contrast to both Frieze et al (1990, 1991) whose findings show that only men's salaries are affected by their obesity, and to Jackson's (1992) contrasting suggestion that being overweight affects women more than men, we found that, for the lawyers in this national survey, being overweight affects both women's *and* men's salaries.

The hypothesis that height would affect men's salaries more than women's was not supported in this sample. In all the models that include height, the coefficients are larger for women than for men. Models 12 and 13 (Table 3) hint that there may be effects of being above or below some cut-off for height, but the effect was only significant for "short" women, a very small portion of our total sample.

These models indicate that the relationship between physical appearance and log salary is more complex than earlier models have suggested. We see evidence that people are penalized if they deviate from a gender-stereotypical appearance, which may be defined within their own profession.<sup>5</sup> In our sample, men are penalized to some extent if they deviate from a stereotypically "normal male lawyer" appearance, whether by being fat, thin, or short. Women in this sample, by contrast, are penalized for being overweight or short.<sup>6</sup>

Thin men may fare worse than thin women in their respective work groups because the stereotype of masculinity includes a minimum body mass. Below this perceptual cut-off, men are viewed as unmasculine (cf. Jackson, 1992). However, there is insufficient evidence of a "thin man" effect in our data to continue this discussion at this time.

Models one (Table 2) and eight (Table 3) reveal that the number of categories of over- or under-weight included in the model affects our ability to capture the effect of weight on salary. All the models establish the effect of overweight on men's salaries, but the effect of overweight on women's salaries would be overlooked by using overly broad categories. By including more than two categories for being overweight we see that among women, the degree of overweight affects their salaries. The most overweight women fare better financially than do the moderately overweight (BMI 25-30) female attorneys. By classifying all women

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<sup>5</sup> If we had the data, we could examine whether individual subcultures (e.g., Southern cities, Midwestern industries, California's semiconductor plants) have their own breakpoints beyond which an individual's appearance is considered "deviant" and therefore penalized.

<sup>6</sup> Are our images of "lady lawyers" being reinforced by the (mostly) lithe bodies on *LA Law*?

above BMI 25 as one group, as had the previous models, it was difficult to see any effect of being overweight on wages.<sup>7</sup> Model one (Table 2) demonstrates a direct, linear relationship between log salary and BMI for *everyone* in the sample, as anticipated by Jackson (1992).

These models strongly suggest that there is a negative effect of obesity on salary among lawyers. The effect is not an anomaly based on specific BMI cut-off points, as it is readily detected in the linear relationship between the continuous BMI variable and log salary. We have demonstrated that these cut-offs do matter for the size of the effect, however.

It is sobering that there should be a reliable and measurable impact of a component of physical appearance in a workplace in which appearance, health, strength, gainliness, and so on have no bearing on the lawyers' performance. Lawyers should be sufficiently well educated to understand that physical appearance doesn't affect the quality of their colleagues' work for the most part, and should recognize that their own stereotypes should not influence their judgments of another's worth. As did the Rhode Island Department of Mental Health, some of these lawyers seem to be relying "on generalizations regarding an obese person's capabilities" (*BNA's Employee Relations Weekly*, 11/29/93). The First Circuit said that evidence of this sort of generalization "comprises a graphic illustration of an employment decision based on stereotyping-- exactly the sort of employment decision that the Rehabilitation Act seeks to banish" (*BNA's Employee Relations Weekly*, 11/29/93). It is disturbing that these lawyers' stereotypes overwhelm their legal reasoning when it comes to compensating their own colleagues.

If lawyers, with their expensive and exclusive training, fail to control stereotyping, how can others, in less highly trained occupations, avoid the same trap? Lawyers on average spend less than 10 percent of their time in the courtroom; despite meetings with clients or other lawyers, most of their work is done alone. There are other careers, however, which bring incumbents into much more direct contact with the public. There is some evidence that overweight and underweight females are less likely to have jobs that require face-to-face interaction with the public than are average weight females (Quinn, 1978). Further research could consider how widespread are both employment and wage discrimination based on physical appearance in careers such as these. We have detected discrimination in an

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<sup>7</sup> This finding may indicate that only a narrow range of women's physical appearance matters to their salaries. One possible explanation is that the most overweight women may be regarded as somehow different or separate from the other women in their field, and thus not held to the same standards as these other women, at least in this setting. We see this effect in other

occupation in which people should be well informed that obesity, thinness, or shortness does not affect performance directly. Moreover, these respondents have, in all likelihood, worked with people who did not have "average" physiques, and should know that their obesity does not reliably signal anything about the person's habits or personality. How prevalent, and how extreme, then, is discrimination against those lacking "average" physiques in jobs in which people are not as well informed as lawyers?

The magnitude of the effect of this discrimination may be substantial in dollar amounts for some individuals. The Federal court of appeals upheld Bonnie Cook's \$100,000 jury verdict; penalties of 10 percent of annual salary that some researchers have found can hurt a person's standard of living. However, even when the magnitude of the discrimination effect in dollars is not substantial for any given individual, the principle is important. It may be worthwhile to reconsider previous studies, eliminating cut-off points or at least increasing the number of categories used, to see whether the discrimination reported by the National Association to Aid Fat Americans can be more clearly documented.

It is not easy to alter unwritten compensation practices that are based on errors of perception. It is harder still to correct the blows to self-esteem that many overweight people experience. Identifying the problem correctly, however, is a step in the right direction.

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arenas: Roseanne Barr Arnold, an overweight comedienne, for example, makes a virtue of her lack of traditional femininity and good looks.

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