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WOMEN PROFESSIONALS: THE SLOW RISE TO THE TOP

ELLEN V. FUTTER*

The status of women in the workforce today is one of conflicts—punctuated by significant rays of hope and examples of stunning individual achievement that contrast starkly with dramatic reminders of how much remains to be done. In 1939, American women's average earnings were 63 cents for every dollar earned by men. In 1988, women earn 65 cents for every dollar earned by men.¹ In business, women are mired in middle management.² In such critical areas as defense, military intelligence and foreign affairs, women are, but for a handful of exceptions, nearly invisible. This is especially apparent at top levels.

The same kind of dichotomy exists within the legal profession. Female law school graduates have been hired for entry-level positions in impressive numbers and some have risen to partnership and comparable corporate levels; one woman has even been named to the highest court in our land. Still, as Judge Kaye reports, there are continuing reports of bias against women in the profession and in the legal system itself.³ A recent American Bar Association survey reveals that women will earn an average of \$57,600 in 1989, whereas men will earn an average of \$132,900.⁴ At the same time, the number of women who go on to make partner in law firms fails to keep pace either with the number of female associates hired or with their male counterparts, as women today constitute only six percent of the nation's law firm partners.⁵ Even those who do make partner are infrequently placed on their firm's executive or management committees.⁶

The overall situation for women and the limits on their advancement will not be satisfactorily resolved until women are admitted to the inner circles of power. In law firms, that means that women not only need to be made partners—and in greater numbers than is the case now—but, of equal importance, women need to be placed on the executive and management committees of their firms. It is also important for women to

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1. Women's Bureau, Office of the Sec'y, U.S. Dept. of Labor, Leaflet No. 88-2, Facts on Women Workers (1988).

2. See Fraker, *Why Women Aren't Getting to the Top*, Fortune Magazine, Apr. 16, 1984, at 40.

3. See Kaye, *Women Lawyers in Big Firms: A Study in Progress Towards Gender Equality*, 57 Fordham L. Rev. 111, 119 (1988).

4. See *Women Still Earn Less than Men as Lawyers*, Wall Street J., Apr. 21, 1989, at B1, col. 1.

5. See *id.*

6. See Zeldis, 'Rainmaking' at Law Firms: *The Last Hurdle for Women*, N.Y.L.J., May 1, 1989, at 1, col. 3 (perceived inability of women to attract influential clients keeps them off of significant policy-setting committees).

head various practice groups at their firms. As Judge Kaye properly asserts, it is only when women achieve leadership roles such as these that the goal of a "genuinely integrated profession" will be achieved.⁷

This is important not just for the sake of equity and gender advancement, but for another even more compelling reason: women have something to contribute to the distribution of legal services and the practice of law as arbiters, judges and mediators as well as advocates. At a bare minimum, the more regular and central involvement of women will enhance our legal system by sheer dint of adding credibility to it—not a trivial outcome in and of itself.

Separate from these concerns is another that is insinuating itself into the discussion of the advancement of women generally, and women in the law specifically. This new concept is the so-called "Mommy track"—the notion that an individual woman should be designated as either a "career primary" or a "career and family" worker, with the latter having the option to work part-time and/or to take time off to raise a family.⁸ While there is no doubt that greater flexibility for women in the workplace is essential, it is wrongheaded to propose creating such flexibilities for women *only*, through a two-tier approach predicated on the sole criterion of whether a woman is a mother.

Such an approach would surely result in further gender stratification in the workforce, relegating issues of children and family to women alone. It is also unsound economically, for even if the short-term price of a benefit such as child-care leave makes the employment of a female law associate or partner temporarily more costly than her male counterparts, or results in her having fewer billable hours for a limited period of time, the long term benefits of retaining her more than compensate for this temporary loss. Moreover, as with corporate America, the most enlightened—and ultimately profitable—firms will be those that offer the greatest number of so-called "women's benefits" to *all* of their employees, male and female. Their competitors will find it necessary to match those benefits or lose their most outstanding employees and recruits of both genders. For any firm striving for top-tier status the cost of failing to attract one-half of the best law school graduates is incalculable.

Quite apart from all of this, the structuring of leave and related benefits in gender neutral terms would improve the law firm culture itself. The availability of leave time to assist in dealing with gender neutral matters such as parents who are aged and ill, divorce and public service efforts will go far to alleviate the so-called quality of life issues that currently haunt many law firms. It would also, I believe, breed the kind of loyalty to firms that seems to be fast dwindling in this era of merging firms and parachuting partners.⁹ More broadly, it would enhance re-

7. See Kaye, *supra* note 3, at 119.

8. See Schwartz, *Management Women and the New Facts of Life*, Harv. Bus. Rev. 65, 69-72 (Jan.-Feb. 1989).

9. See Lacayo, *Tremors in the Realm of Giants*, Time Magazine, Dec. 7, 1987, at 58.

spect for the profession both from within and without, by recognition of the human values and tradition of service that have inspired the greatest leaders of the bar. This seems especially important in an era where the reputation of lawyers has been seriously tarnished in the public eye.

Finally, there is a kind of negative self-fulfilling prophecy in excluding women partners from the highest levels of law firm management, for their absence undermines their overall stature in the profession and their capacity, ultimately, to serve as successful "rainmakers." As women move into positions of leadership, I submit that the law firms that involve them at the highest levels soon will boast the most effective female "rainmakers" and increased firm profits.¹⁰

In short, there is everything to be gained by the full engagement of women in the practice of law—including their admission to the centers of power. Law firms can play a leadership role for all of America by involving women not only as partners but as members of their executive and management committees and heads of their practice groups. Doing so will be both painless and beneficial—the ultimate "win-win." Because our male colleagues in the profession are smart enough to figure this out and because many of them believe it to be just and proper, I believe it will happen—and soon.

10. See Zeldis, *supra* note 5.

