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GENDER EQUALITY IN THE PUBLIC SECTOR

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Public sector law practice offers an attorney the opportunity to develop significant lawyering skills at an early stage, while following a full, but reasonable, work schedule. Practice in large private firms today differs in two respects: hands-on work is postponed in favor of apprenticeship relationships with senior attorneys; and, most pertinent to the issue of gender equality, there is a strong emphasis on billable hours.¹ As Judge Kaye points out, even heavier time commitments than in the past are now required in the private sector,² just at the time when women—who have been the primary child-care providers—have entered the mainstream of law practice in large numbers.³

One incentive that drives private sector lawyers to work exceptionally long hours is lacking in the public sector. Insofar as a public law office does not bill its clients, and its lawyers are not compensated based upon the number of hours worked, it does not make sense for public law offices to measure a lawyer's effectiveness according to the number of hours billed. The result is that public sector lawyers need not work exceptionally long hours to be considered for interesting assignments and advancement. As a result, in most public law offices, lawyers with parenting responsibilities generally are not at a disadvantage.⁴

Another factor enabling public sector lawyers to follow a more predictable work schedule is that these lawyers have greater control of their work schedules than those in the private sector. This is partly because public sector lawyers receive responsibility for an entire matter at a stage far earlier than would associates in a large private firm.⁵ As a rule, only

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1. It was recently reported that some New York City law firms are budgeting associates for 2,500 billable hours. See Marcotte, *Hours Way Up*, A.B.A. J. 18 (Dec. 1988).

2. See Kaye, *Women Lawyers in Big Firms: A Study in Progress Toward Gender Equality*, 57 Fordham L. Rev. 111, 114 (1988).

3. Although women have been steadily swelling the ranks of law firms, they remain largely unrepresented in positions of power. See *'Rising Stars' Shine in Major Law Firms*, N.Y.L.J., Jan. 23, 1989, at 1, col. 3. Based on a survey of 150 major New York City law firm partners and clients, 29 lawyers were denominated "rising stars." All are men. *Id.*

4. It should be noted, however, that 1989 promotions announced in two New York City prosecutorial offices indicate that women are not rising to positions of prominence in those offices. In the office of the United States Attorney for the Southern District of New York, of nine new appointments not one was a woman. See *Shifts in U.S. Attorney's Executive Staff*, N.Y.L.J., Jan. 24, 1989, at 1, col. 3. Similarly, of seven 1989 executive appointments by the new Bronx District Attorney, only one was a woman. See *Today's News*, N.Y.L.J., Jan. 25, 1989, at 1, col. 2.

5. Junior litigation associates in big firms usually do not assume responsibility for an

one or two lawyers are assigned to a matter in a public law office, which saves time and permits more efficient scheduling. The attorney with primary responsibility for the matter can choose to call it a day when, in his or her professional opinion, the day's work is done. Another benefit of a more independent work pattern is that public sector attorneys can develop a wide range of experience early in their careers. Junior attorneys argue motions and appeals; they try cases of varying degrees of complexity and monetary risk; and they draft legislation and negotiate contracts. The ability to develop extensive experience with clients, courtroom procedures and the process of managing a legal matter gives an attorney highly marketable skills that may never be acquired in a private firm, especially on a limited schedule.

The availability of flexible scheduling options is also an important consideration for lawyers hoping to raise a family. In the large public law offices in New York City, maternity and paternity leave and part-time options are available to attorneys in some offices, but not all. An informal survey⁶ of these offices in New York City indicates that there is no comprehensive approach to these options,⁷ and the public sector as a whole has not embraced the concept of part-time work. Meanwhile, more private firms have been creating part-time options for lawyers with young children, as Judge Kaye's article notes.⁸

One possible explanation for the comparative lack of scheduling options in public law offices is that private firms have stronger incentives to allow part-time work or a flexible schedule for a lawyer-parent when it is the only means of retaining the attorney's services. Private firms hotly compete to win the services of associates. Considerable time and money are spent on recruiting, and women, who account for over forty percent of the law school population,⁹ are actively recruited. Having invested these efforts, it makes good economic sense for firms to retain their associates as long as possible. In addition, the private firm has complete ad-

entire case because, with occasional exceptions, there are few small matters in big firms which might be appropriate for a junior associate's level of experience. See Marcotte, *Corporations Cut Legal Costs*, A.B.A. J. 22 (Feb. 1989).

6. The survey was conducted through informal telephone interviews of personnel officers from the respective public law offices. The telephone interviews took place between February and May, 1989.

7. New York City Corporation Counsel, for example, provides up to three months unpaid maternity/paternity leave. The office offers a limited number of part-time positions, subject to the discretion of the Division Chief. The District Attorneys' offices in Manhattan, Brooklyn and the Bronx, on the other hand, generally provide maternity/paternity leave on a disability policy with no part-time work options. The New York State Attorney General's office appears to have the most generous program of the public law offices surveyed, providing several maternity/paternity leave options, one with up to seven months of unpaid leave. Part-time work is also broadly available, with up to a thirty percent reduction of regular hours.

8. See Kaye, *supra* note 2, at 123.

9. See *ABA Report: Women in Law Face Overt, Subtle Barriers*, N.Y.L.J., Aug. 19, 1988, at 1, col. 1.

ministrative freedom to craft an individually tailored work schedule to satisfy the firm's and an individual attorney's needs.

In contrast to the flexibility of private firms, personnel policies in public offices are framed in a bureaucracy and are much more difficult to change. Even if some part-time work is available, only a certain number of attorney positions may be authorized in a public law office's budget. If available part-time positions are already filled, a public law office may not have the option of offering a part-time position to a particular attorney, even if it would like to do so, unless office-wide policies are changed. While none of these problems is insurmountable, they do exist in some public law offices.

What is needed to increase part-time opportunities in the public sector is a strong policy directive from our political leaders, so that there will be greater impetus to respond to the justified needs of parents and children. A woman's child bearing years generally coincide with the ten to fifteen years following graduation from law school. Fairness dictates that employers recognize this biological fact and provide reasonable part-time opportunities to those who have the burden of child-care so that they can continue to participate in their hard-earned career.

The growth of flexible scheduling options in law offices, both public and private, inevitably will depend on the relative success of such arrangements as more experience is gained with them. While part-time workers may create more administrative work and scheduling difficulties, it is generally true that the employer receives more than is due from a part-time worker, because extra, "uncompensated" hours are inevitably spent on assigned projects.

Law school placement officers can help to encourage the growth of scheduling flexibility by encouraging firms and public law offices to include in the descriptions of their practices a discussion of available leave or flexible time options. If the law schools highlight the importance of this factor, the legal community may become more sensitive to the general need for a comprehensive child-care system and the specific need for positive and more predictable solutions by individual law offices.

Lawyers—both women and men—who wish to devote substantial time to their families must make a special effort to balance the demands of work and private life. As more attorneys insist on setting career priorities that are appropriate for their family commitments, the legal profession must grow to accommodate those demands and, I believe, will be better for it.

