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Viewpoint: Post-Feminist Legal Profession? Not So Fast

Drucilla Stender Ramey

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Just the other day I [had occasion to dine](#) with a group of remarkable women of a certain age who had recently been featured by this newspaper as "[Women Leaders in the Law: Blazing the trail for 35-plus years.](#)" Right there you knew, of course, that these were women who had stayed the course, who had early and often resisted the siren call of a more conventional path, and who collectively called to mind the rallying cry of an earlier time: "This is what a feminist looks like."

Having individually and together fought their way to the top of their respective fields at the height of the woman's movement, it was clear that this group was flummoxed by younger women's apparent repudiation of the feminist label. This despite the conviction that newer generations surely must be no less concerned than their forebears with issues of equality and liberation of the human spirit.

Grappling with the feminist sobriquet is hardly a new phenomenon. Some years ago, Dame Rebecca West, for example, observed, "I ... have never been able to find out precisely what feminism is; I only know that people call me a feminist whenever I express sentiments that differentiate me from a doormat or a prostitute."

But I fear that today's plainly erroneous yet oft-stated assumption that we now live in a post-feminist, post-racial society poses great peril to the women now coming up in the legal profession.

More than 150 years ago Frederick Douglass warned that, "Power concedes nothing without a demand. It never did and it never will," a sentiment keenly understood by my luncheon companions and certainly no less true today than it was 40 years ago when the legal firmament first began to shift. Yet in this era of so-called "second generation" discrimination, characterized by more subtle but often no less exclusionary structures and practices, the demand for equality of position, status, compensation and ultimately power and change, has become curiously muted. The language of civil rights, equality, freedom from discrimination, affirmative action and, yes, feminism, has yielded to more benign constructs of diversity, best practices and affinity groups.

One might be justified in concluding that all is now well in the calling committed to the achievement of equal justice under law. Recent reports, however, paint a contrary picture — one of resegregation in a profession that has never done very well in diversifying its top, or even penultimate, ranks (significantly, among the 20 Women Leaders in the Law there were only three women of color, none of them in private practice), an emerging paradigm that cries out for clear and insistent demands for institutional change.

ABA statistics on law school matriculation of minorities, for example, demonstrate that while the percentage of the minority law school population more than tripled between 1971 and 1995, and more than doubled between 1982 and 1995, the number of minorities rose a mere 2.7 percent in the ensuing 15 years, virtually all of that attributable to Asian-American and non-Mexican-American, non-Puerto Rican Hispanic students. Within the profession, a recent report by the National

Association for Law Placement demonstrates that while the percentage of minorities in reporting law firms continues to inch up, they still comprise only 12.7 percent of all attorneys in reporting firms and barely 6.5 percent of partners.

The analogous numbers for women law students and lawyers are exponentially higher, but the steep upward trajectory for women law students since the early '70's peaked almost 10 years ago, in 2002, at 49 percent, tapering off to 46.7 percent by 2007 and rising only marginally since then.

In larger firms, as highlighted in a recent report by the National Association of Women Lawyers, while women continue to constitute just under a third of the legal profession and have long comprised more than 45 percent of associates in large firms, that latter all-important index of pipeline vitality began to marginally drop off two years ago, while women's glacial progress into equity partner positions has long stalled at 15 percent. By contrast, women comprise a far greater proportion of nonpartner track positions in big firms, representing 34 percent of counsel positions, 55 percent of staff attorneys and almost 80 percent of a curious new oxymoronic status dubbed by NAWL as "fixed-income equity" partner.

Not surprisingly, the leadership positions pivotal to decision making on all aspects of law firm life remain virtually devoid of female representation. Only 5 percent of large firms, for example, are reported to have a female chair, and 45 percent of the firms have zero or one woman on their highest governing committee. Perhaps most concerning, nearly half of all large firms reported no women at all among their top 10 rainmakers, and compensation for women equity partners is only 86 percent of the amount earned by their male peers. It's no wonder that many firms have sought to publicly blur the distinctions between true equity partners and other partners when reporting on partnership diversity, while including only full equity partners in reports on profits-per-partner.

Some women — and minority — associates also fear they may be negatively affected by recent restructuring in the associate ranks of some firms, involving a collapsing of the multilevel, lockstep associate track into only a few associate categories, dubbed, in one firm, Associate, Managing Associate and Senior Associate. The concern is that this will result in earlier and greater emphasis on the kind of client development and rainmaking so problematic for women and minorities, who historically have been largely excluded from the informal networks necessary for client referrals and development of a substantial book of business. These groups also fear the disproportionately adverse impact from more subjective promotional systems, which have long been documented to be vulnerable to bias.

Women's comparative absence from the higher reaches of elite firms is often attributed these days, however, not to systems of structural exclusion, with few if any on-ramps back in, but rather to women's own "personal choices." Yet this understandable focus on work-life balance, and the intense anxiety it has caused younger women lawyers well before most of them have anything much to balance, can pose a real danger to women's advancement in the profession. It has become increasingly fashionable in the media, for example, to celebrate what is deemed to be a societally beneficial biological imperative. Articles of this genre tend to focus on white, married, upper-middle-class mothers who are fugitives from legal and other high-status careers and whose husbands are apparently willing and able to serve indefinitely as the family's sole financial support. As summed up by one such highly accomplished ex-professional, quoted favorably in ["The Opt-Out Revolution,"](#) an Oct. 26, 2003, *New York Times* article by Lisa Belkin, "It's all in the [female] MRI," while another mused, "At this moment in Western civilization, seeking clout in a male world does not correlate with child well-being."

Aside from the fact that, as author Leslie Bennetts has put it, "A man is not a plan," if it is true that even the best and brightest women are biologically driven to jump ship at the cusp of career success rather than stay and fight, then why should the men who continue to run our nation's principal legal institutions keep hiring and promoting women? Why undertake all those costly and taxing efforts to eradicate sex discrimination in the workplace if biological determinism will lay waste to the results?

Most importantly, the focus on the "pull" of motherhood leaves firmly in place the "push" side of this equation — continuing structural patterns of exclusion, occasional outright bias and the operation of pervasive stereotypes. These stereotypes include, for women, inadequate analytical skills and insufficient professional commitment. Nearly every available survey details these and other destructive stereotypes that continue to plague the legal profession, disastrously combining with often arbitrary and subjective systems of evaluation, promotion and distribution of work assignments, and scarce training opportunities, not to mention the crushing tyranny of the ever-increasing billable hour. Perhaps most harmful is the often unintentional exclusion of women, minorities and other nonmajority groups from the informal networks critical to rainmaking and career success, largely as a function of the natural human tendency for like to seek like. In the law firm context, this takes the form of senior white male partners selecting, mentoring, socializing with, steering business to, and generally sponsoring younger white men in their own image.

The resultant disproportionate attrition of women, and their consequent absence from equity partnerships and top leadership positions, is a key factor in the failure of firms to systematically devote their otherwise considerable problem-solving skills to diversifying their higher ranks or to meaningfully accommodate the desire and necessity for lawyer-parents to devote time to family and children.

Former U.S. District Judge Nancy Gertner has said, "When we — the women of my generation — decided on careers we felt that we were representing our generation in every setting. Too often we hear women of the generations behind us say, 'No, this is our private choice. I can choose to withdraw from the rat race.' Of course you can. But this is not about private choice. This is a social problem, this is a problem of equality. I don't know which direction we're taking — the failure of the revolution, or a new one."

If there is anything *The Recorder's* Women Leaders can pass on to our younger sisters in law, it is that we're with you in a new revolution, whatever it is that a feminist looks like these days.

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The Recorder *welcomes submissions to Viewpoint. Contact Sheela Kamath at skamath@alm.com.*



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