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WOMEN IN THE LAWYERING WORKPLACE:
A PRACTICAL PERSPECTIVE*

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When I was asked to be a member of this panel, I spent some time thinking about from which perspective I would speak. There were several to choose from: my perspective of being a woman partner in a large law firm; my perspective as a black woman in corporate practice; or my perspective as a black woman partner in corporate practice. Since there are very few black women partners in large New York City law firms, and not many more in large firms nationwide,¹ I doubt very seriously if there is such a thing as a black woman partner's perspective. I decided that the most relevant perspective from the point of view of the panel was that of a woman partner in a large law firm.

When I started law school in 1974, women were suing large law firms in order to be hired.² When I was first being considered for partner in 1984, women were suing large law firms to be made partners.³ Six years later, now that some of us have "made it," women are wondering if success and partnership are worth the fight—a debate more frequently heard among women than men, although men are questioning many of the same things. If a man chooses to get off the fast track in order to pay more attention to lifestyle issues, he is viewed by his contemporaries and by the workplace as having sold out, or even worse, as not being competent. If a woman chooses to focus on lifestyle issues, she is generally not viewed as having sold out or being incapable. Rather, she is viewed as having taken the easy way out and having "acted like a woman." In any event, the toll of corporate practice is an issue that concerns all of us, male and female, even though women talk about it

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1. A survey of the nation's 250 largest law firms showed that of the 23,195 partners in 1989, 40 were black women. Jensen, *Minorities Didn't Share in Firm Growth*, Nat'l L.J., Feb. 19, 1990, at 1, col. 1.

2. See, e.g., *Kohn v. Royall*, Koegel & Wells, 496 F.2d 1094 (2d Cir. 1974) (female law student allegedly denied summer position at law firm); *Blank v. Sullivan & Cromwell*, 418 F. Supp. 1 (S.D.N.Y. 1975) (class action brought by female who was rejected for position as attorney maintainable under title VII); *EEOC v. Rinella & Rinella*, 401 F. Supp. 175 (N.D. Ill. 1975) (defendant law firm's motion to dismiss title VII sex discrimination suit denied).

3. See, e.g., *Hishon v. King & Spalding*, 467 U.S. 69 (1984) (title VII binds firm to consider applicant for partnership without regard to sex).

more frequently.

The discussions today have focused on many feminist issues, as if there was an agreement as to what the issues are. I have found in my years of practice, however, that women have many perspectives on what are feminist issues in the workplace. The two issues that most readily come to mind are childbearing and lifestyle. The childbearing issue is one that has been somewhat satisfactorily addressed by most large firms, most likely because it is fairly easy to address. A woman having a child is a finite issue from a law firm's point of view. A woman gets pregnant, has the baby, takes a specified maternity leave, and then comes back to work. End of story. Most firms do not consider the woman's adjustment to her role as a mother to be an issue that needs to be brought into question.

The lifestyle issues arise when a woman either does not want to return to work at the end of the scheduled maternity leave or wants to work on a part-time basis. The lifestyle issue is not easily addressed, largely because several perspectives need to be considered. Among them are the perspectives of the clients, the firm, the lawyer who is interested in changing her work style, and the lawyer's colleagues.

The client's perspective is probably the one believed to be most important in a large firm. Those of us who practice law realize that we are in a service industry. Clients' needs differ, and they hire their law firms and lawyers accordingly. Clients choose large firms because they want the work done "yesterday," and are willing to pay in order to have a large number of people spend a great deal of time working on their issues and their issues only. As a result, the clients of a firm govern to a large extent the firm's ability to accommodate lawyers who wish to work within a different time frame than that of the clients. Unlike a corporation, where management can determine the extent of commitment they want from their employees, a law firm needs the same commitment from its lawyers that its clients want from the firm. If the client's workday ends at a reasonable hour, so does that of its lawyers. If the client's work never ends, neither does its lawyers'. While a client's demands may not be rational or fair, they exist, and the firm's need to deal with those demands is often overlooked by a lawyer looking to reduce her workload.

The second perspective affecting lifestyle issues is the law firm's. As I just discussed, the law firm's needs mirror those of the client, and its willingness and ability to accommodate differing work schedules depends on its clients. For that reason, a lawyer requesting a less rigorous work arrangement is often viewed as having a different commitment to the firm's practice than that needed. While firms are often criticized for not having a part-time policy, given the nature of the work in any one firm and the needs of the clients and the lawyers involved, part-time arrangements are more easily addressed on an individual basis.⁴ The most

4. For a listing of firms which provide part-time work policies, see generally NAT'L

important thing is that the firm understands what an associate wants from the firm and what she is willing to give in terms of a part-time arrangement. From the firm's point of view, there are also secondary cost issues involving office space, secretarial staffing, and attorney benefits. Since the firm has to bear these fixed costs regardless of the hours the attorney works, any part-time arrangement has to be one that involves enough of a time commitment to make it profitable for the firm.

Another perspective requiring consideration is that of the lawyer who wants to change her working hours. Unfortunately, this issue arises for most women when they are pregnant or have just had a child, and are less able to make an informed decision as to what they want in the future. Most know they do not want to continue working at the same pace they maintained before they got pregnant, but do not know what they want in its place. Among the various types of part-time arrangements, the two most common are where an attorney works a specified number of hours each day or days during the week, or where the attorney works for a specific client.⁵

The major disadvantage to the firm in having part-time arrangements is that the law, particularly in a large law firm, is not a regular business. Meetings have a habit of not ending when the workday is supposed to end. Depositions go on for more than the scheduled number of days. Lawyers have to go out of town and stay until the job done is completed. If the requirements of the job do not coincide with the schedule of the lawyer, it can be frustrating for the client, the firm, and the lawyer.

But, for the lawyer who works for one client or a limited number of clients, many of the problems that I just discussed do not arise. When the client is busy, that lawyer is busy; and alternatively, if the client is not, the lawyer is less busy or not in the office. The disadvantage of this arrangement from the lawyer's perspective is that she has not gained what she often wants—the ability to spend time with her family on a regular basis.

ASS'N LAW PLACEMENT, DIRECTORY OF LEGAL EMPLOYERS (1990). Several of the 48 firms surveyed consider an employee's part-time work opportunities on an individual basis. Forty-two firms state that they presently have part-time programs, however, only three of them have more than nine part-time attorneys. Skadden, Arps, Slate, Meagher & Flom has the largest part-time program with 42 of their 948 associates working part-time. See also Shad, *Working Part Time Without Paying the Penalty*, N.Y. Times, Aug. 3, 1990, at B7, col. 4 (a discussion of part-time associates and how their choice may affect their chances for partnership).

5. Shad, *supra* note 4, at B7. For various part-time arrangements women have been able to work out with their law firms, see Handler, *Diapers and Depositions*, 71 A.B.A. J., Apr. 1985, at 66; Kanarek, *Can Part-Time Lawyers Break the Barriers?*, 13 BARRISTER, Spring 1986, at 51.

Successful part-time arrangements are a compromise between the two. In these situations the lawyer expects to work a particular number of hours during the week, but knows that the nature of the job dictates that she may have to work more, and alternatively, will sometimes be able to work less. Most importantly, both the lawyer and the firm must be flexible and be prepared to come to a different arrangement than the one originally contemplated.

Another less often discussed perspective is that of the lawyer's contemporaries, both male and female. Most men, even those who have wives who are also professionals (and in many cases also have children), view women working part-time with some disdain, but also, less obviously, with envy. While they feel women have taken a less rigorous work path, in many cases they would like to be able to do the same.⁶ Women are also ambivalent about other women working part-time. On one hand, most women want to have children or are supportive of women who do, and realize that working full-time in a large firm and being a full-time mother is difficult, if not impossible. On the other hand, many women worry that different treatment of women is inconsistent with equal treatment, and that part-time work reinforces the view that women are not committed to their careers.

Even if we, as women, were able to agree on the issues, I expect we would have an even more difficult time resolving them. If you were to ask ten women lawyers various questions about maternity leave, part-time work, evaluation, promotion, and partnership, you would probably have ten different views on each subject.

How women view feminist issues is as much a function of where they are in their careers as who they are. For the young lawyer, women's issues focus more on the nature of the work they are getting, and whether they are receiving the same opportunities as their male contemporaries. Women who have been in the workplace for a number of years are more interested in issues of evaluation and promotion, and are also dealing in a very real way with the issues of childbirth and returning to work after having children. Women at more senior levels are worried about issues of management responsibilities, client relationships, and allocations of power and profits.

Take, as an example, maternity leave. For most women associates, maternity leave is viewed as a benefit and is taken as a matter of course. For women partners, the issue is somewhat more complicated. In the last

6. See Liefland, *Career Patterns of Male and Female Lawyers*, 35 BUFFALO L. REV. 601, 601 (1986) (the results of various studies indicate that females are more likely to work for the government and public interest sector than men, who are more likely to enter private practice and garner higher salaries); Overholser, *So Where's the Daddy Track?*, N.Y. Times, Aug. 25, 1988, at A26, col. 1 (men are less likely than women to take time off from work to be with their children for fear that time off will damage their careers).

few years, several of the women partners in my firm have had children. The amount of time they took for maternity leave ranged from under a month to over four months.⁷ The view of the woman taking the shortest leave was that she should return as soon as she was able, since to stay away longer was to let her partners down. The view of the woman taking the longest maternity leave was that since she was a partner and had proven her commitment to the firm, she should come back to work when she was ready.

What we have really been talking about on this panel is how one forces an institution, in my case a law firm, to change. My view is that since law firms are basically economic institutions, they will only change if the economics of the workplace require them to do so. In the past decade, we have seen fast-paced growth in almost all successful law firms,⁸ growth which corresponded to the growth in our economy, particularly the real estate and mergers and acquisitions businesses.⁹ As law firms were growing, they needed to hire more lawyers, many of whom were women. To be competitive in hiring, and to keep the women associates they had, firms had to be more flexible.¹⁰ If 1990 is any indication of the rest of the nineties, what we will see is a no-growth, or possibly recessionary, environment. Firms are hiring fewer lawyers, being more particular in their promotion decisions, and making fewer partners.¹¹ In such an atmosphere, I question whether or not law firms will feel the same need to continue to change as they did in the last decade. If they do, it will only be because women have become a much more valuable commodity now than we were ten or fifteen years ago.

7. On maternity leave, see Handler, *supra* note 5, at 67 (a 1983 survey indicated that 87% of women who took maternity leaves returned to work within six months of childbirth); Kanarek, *Mothers in Law: YLD Survey Studies Careers*, 13 BARRISTER, Spring 1986, at 7 (a 1984 survey of the country's 250 largest law firms indicated that the length of maternity leave is based on a period of fixed duration for normal pregnancies while subsequent child care leave is dealt with on a case-by-case basis and is not limited to women); Project: *Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, 40 STAN. L. REV. 1209, 1223 (1988) (a 1982 *Stanford Law Review* survey indicated that law firms will permit maternity leaves which typically last only a few months).

8. For examples of the growth in New York firms, see *The 1980's: Bigger Equals Better; Skadden Led Boom; Midsize Firms Suffered*, N.Y.L.J., Jan. 2, 1990, at 1, col. 1.

9. See generally Gilson & Mnookin, *Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits*, 37 STAN. L. REV. 313 (1985) (describing the internal organization of firms to minimize risks).

10. Kaye, *Women Lawyers in Big Firms: A Study in Progress Toward Gender Equality*, 57 FORDHAM L. REV. 111, 122-26 (1988).

11. Elstrom, *Prosperous Law Firms Are Bracing for Stormier Economic Conditions: Leaner Times Bring More Scrutiny to Hiring, Cuts in Spending*, Wash. Post, Oct. 22, 1990, at F1, col. 2.

