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DIVERSITY – THE TWO-EDGED SWORD

By Peter A. Giuliani

Not long ago, a female partner in a small Vermont law firm showed me a framed rejection letter she received from a well-known Wall Street law firm in 1967. In short, it said “*Thank you very much for your letter of application, but it is the policy of this law firm not to employ female associates.*”

How times have changed. Cruise most larger firm websites, or look at their listings in the familiar yellow directory of law firm leaders, and you will see increasingly frequent mention of “*diversity committees,*” “*diversity partners,*” etc. In many (if not most) recent law school graduating classes, women graduates are beginning to outnumber men. Major corporate law departments require their outside counsel to demonstrate their commitment to diversity by hiring and promoting women and persons of minority ethnic backgrounds. Law firms are now touting their commitments to “*work/life balance,*” “*family-friendly environment*” or “*flexible working arrangements*”—code words that generally mean “We accept women lawyers who also want to raise a family.”

Diversity goes far beyond just the feminizing of the profession, however. There is an increasing population of young, male associates who want to take a greater role in raising their children. They also have wives with careers, and have to share in the work of making a home.

Perhaps no other issue will affect the legal profession more in the decades to come than how it deals with the changing demographics, career aspirations, work ethic and demands of this forever-changed pool of talent, from which they will eventually have to develop a generation of future leaders. A few firms will be able to buck the trend by paying even higher associate salaries to attract and retain those who are prepared to make huge personal sacrifices. Most firms will have to adapt, but the economics of their practices may have to change – radically.

In most firms, “*diversity*” translates to providing part-time and flexible work arrangements for female lawyers who have recently had a child. The typical arrangement calls for the new mother to return to work on a part-time schedule, with a proportional cut-back in pay, for example, a four-day-per-week schedule at 80% salary, plus health benefits.

To understand the economics of this proposition, let’s look at a simple example. Suppose we have a law firm in which associates typically bill 1,600 hours per year – hardly a sweat-shop pace. Suppose further that a third-year associate at the firm is paid a salary of \$120,000 per year and the firm bills and collects \$225 per hour for the associate’s time. Finally, suppose that the firm spends another \$120,000 per year on “*overhead*” to support the associate (i. e., part of a secretary, office occupancy cost, computers, malpractice insurance, central support staff, benefits, etc.)

Allowing for four weeks’ vacation and the usual holidays, the firm’s “*productive*” year is 46 weeks long. So, in order to hit 1,600 hours, associates have to bill about 35 hours per week, or seven hours per day. In this example, by cutting the associate back to four days per week, the firm gives up one day per week of revenue, or about \$2,070.

But, the firm also cuts the associate's pay by 20%, from \$120,000 per year to \$96,000. This works out to a savings of about \$520 per week. One might argue that the savings might be greater because of reduced payroll taxes and benefits costs. Unfortunately, at the associate's pay level, the largest portion of payroll taxes – FICA and Medicare – are largely fixed. Overhead is also fixed, because the firm typically supports the 80% associate as though she were working full-time. For the sake of fairness, however, let's add another \$30 per week in cost savings to this example. So, after allowing for \$550 per week in savings, the firm is losing \$1,520 per week in net revenue. On an annual basis, this amounts to \$69,920 in lost revenue, net of cost savings.

Before the associate went on part-time status, the firm was earning an annual profit of \$120,000, based on her annual billings of \$360,000 per year. After she goes on part-time status, the annual profit drops to \$50,080. Thus, a 20% reduction in revenue, accompanied by a more-than-20% drop in salary cost results in a 58% drop in profit. The ultimate cost to the firm, however, will be determined by how long the associate stays on part-time status.

Please do not misunderstand. This is not an argument against trying to provide a balanced work environment. This author believes that most firms must adopt "*family-friendly*" practices or they will not be able to recruit young lawyers in the future. The challenge lies in getting both sides of the debate to recognize the true cost of such programs and reaching common ground on expectations. We do not have the solution yet, but if we work at it, we will find one. Let's keep trying.

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