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**Women and Consideration:  
*Negotiation Makes All the Difference***

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## **The Benefit of the Bargain?**

When women leave the practice of law, nobody wins. This is especially true in law firms where the costs of attrition are very high. One analysis concludes that firms do not recoup the initial investment they make in an associate until close to three years from her date of hire<sup>1</sup>. Another estimates that the costs to identify, recruit, pay, and support an associate for the first three years ranges from \$500,000 to \$700,000<sup>2</sup>. Of course there are indirect costs as well, including a negative impact on client relationships and employee morale.

Yet despite the clear business case, the exodus of women from law firms continues. After less than five years' employment, more than half of the female associates leave law firms. And nearly two-thirds of the minority female associates leave.<sup>3</sup>

Few dispute that there is a problem – the question is how to solve it. Recommendations to tackle the

systemic root causes and complicated issues<sup>4</sup> are absolutely necessary; firms that wish to retain talented women must continue to surface and address practices that disadvantage women. Not surprisingly, as with any change initiative, support from firm leadership is critical. As change ripples throughout the firm, however, it gets more complicated.

Regardless of policies that may in place to support women, their effectiveness often comes down to the individual's willingness to negotiate how and when to use them. Our research<sup>5</sup> shows that creating an environment that encourages women to do just that can make all the difference in retaining talented women.

## **It's Still a Test**

Despite considerable progress, it's still a test<sup>6</sup> for women in the workplace; particularly in the legal profession. Although well represented at the associate level, the numbers fall off precipitously at both the non-equity partner and equity partner levels.<sup>7</sup> Part of the explanation is that powerful stereotypes about women and their roles in the workplace linger

even today, hindering the advancement of women.

And *both* men and women believe these stereotypes. For example, both men and women believe that men are better at delegating and managing upward and women are better at rewarding and supporting others<sup>8</sup> Rarely do people have bad intentions, rather, when gender is the issue, it is often the case that people are simply unaware of the unintended consequences of their actions.

Working on highly visible assignments and interacting with interesting clients means working with the powerful partners – usually men. However, even a committed champion of women admitted to us<sup>9</sup> that he is less likely to select a woman for a leadership role when the stakes are high. He tends to know the men better, is more likely to have mentored them and has more confidence that they will succeed. He's not as sure about the women and working with them can be more complicated. So, only

human, he takes the path of least resistance.

Michael G. Cummings summarized Lauren Stiller Rikleen's findings about the importance of business development to an attorney's career path aptly, "the sun always shines on those who make rain."<sup>10</sup> Being included in the business development "pitch meetings" and having an opportunity to make a good impression is critical to career success. Yet, women without the same access to the informal networks that men do, may be excluded from these meetings. Or, if they are included, too often they have no clearly defined role at those meetings, leaving them unsure about how and when to contribute.

Decisions (and many other actions that do not even rise to the level of conscious decisions) and situations like these affect the way women experience the practice of law. As a result, women lawyers are less satisfied with their jobs and can feel stalled in their careers<sup>11</sup>. When they "opt out" of law firm life, the easy answer is to blame the women they're not devoted enough to the profession, they're distracted by their family responsibilities, they're not willing to put in the hours.

These assumptions are unproven, however. While many firms do conduct “exit interviews”, rarely does the data gathering provide the real story; once they’ve made the decision to leave, few women are willing to provide feedback that might burn their bridges behind them. Firms should be encouraging women to give them more and better information about what they want and whether or not their needs are being met. Plainly stated, if firms are aware of these concerns *before* women hand in their resignations, they can take the steps necessary to retain them.

### **The Tiara Syndrome: A Career Killer**

While negotiation not only positively impacts a woman's career and has demonstrable payoffs for her employer, many women fail to recognize opportunities to negotiate. We call it “The Tiara Syndrome” — women who keep their heads down, deliver excellent results and expect that some day, some one will notice and reward them appropriately, i.e., a tiara will fall on their head.

Technical skills, while necessary, are not sufficient for a lawyer to become a partner, assuming that is her goal.

Hundreds of highly accomplished women attorneys have admitted to us that while they are very effective at advocating for their clients, they are less effective at advocating for themselves. This admission can cause a great deal of discomfort as there is a common belief that because one is a lawyer, she should be skilled at negotiation.

While it is true that negotiation skill is a core competency for lawyers, negotiating for clients is different. When a woman negotiates on her client's behalf, her role can protect her. She can be “excused” for standing firm to represent her client's needs. When she advocates for herself, no such protection applies.

To further complicate matters, many women who have “asked” for things that are important to them have experienced backlash. They are labeled as aggressive (rather than assertive) and considered “high maintenance”. Understandably, once stung, they are reluctant to keep asking. It can be awkward to raise “difficult” issues in a firm where the accepted way of handling things is

to hope they resolve themselves. It can be a career limiting move to ask to be assigned to a particular matter if one doesn't ask the right person, at the right time and in a way that is culturally acceptable. It can be downright dangerous to try to extricate oneself from working on a case with a senior lawyer with an undiagnosed borderline personality disorder unless one makes the right strategic moves.<sup>12</sup> Yet these things and other seemingly innocuous issues affect working relationships and job satisfaction. And how to deal with them is not taught in law school.

### **What's Good for Women is Good For the Profession**

When women recognize and take advantage of opportunities to negotiate in the context of a workplace relationship, balancing advocating for one's needs while remaining connected<sup>13</sup> with colleagues and clients by considering their needs as well, it's a "win-win" all around.

Practical developmental skills training focused on recognizing

opportunities to negotiate and leveraging them more effectively benefits women, their law firms, and the legal profession.

Women benefit from learning about common traps and mis-steps and how to proactively manage their careers. Not only is such knowledge the start to changing ineffective habits but it also helps to build confidence in the support of other women<sup>14</sup>.

Not only is the business case compelling from a cost containment perspective but clients are increasingly demanding a demonstrated commitment to diversity<sup>15</sup> at all levels from their legal counsel. Retaining talented women, therefore, is not optional. Firms need to know what women attorneys are thinking in order to accomplish that objective.

And the profession will continue to benefit from advances to its understanding of justice as the voices of women in the law grow stronger.

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<sup>1</sup> Parting May Be Sweet Sorrow, But It's Getting More Expensive, Peter A. Giuliani, New York State Bar Association Journal, May 2006.

<sup>2</sup> Best Practices for the Hiring, Training, Retention and Advancement of Women Attorneys, Committee on Women in the Profession, New York City Bar, February, 2006. *See also* Changing Approaches to Lawyer Training: The Latest Battleground in the Growing War for Talent, James W. Jones, Hildebrandt Institute.

<sup>3</sup> Achieving Gender and Ethnic Diversity in the Profession, Mark H. Alcott, New York State Bar Association Journal, November/December 2006. *See also* NALP Foundation for Research and Education, Keeping the Keepers: Strategies for Associate Retention in Times of Attrition: A Best Practices National Research Study on Lawyer Careers (January 1998) reporting on a survey of 154 law firms involving more than 10,000 associates. The findings revealed that 10% of the associates leave their firm within one year, 43% leave within 3 years, two thirds leave within 5 years and three quarters are gone by their 7<sup>th</sup> year.

<sup>4</sup> Ending the Gauntlet: Removing Barriers to Women's Success in the Law, Lauren Stiller Rikleen, Thomson Legalworks; March, 2006.

<sup>5</sup> Her Place at the Table: *A Woman's Guide to Negotiating Five Key Challenges to Leadership Success* (co-authored with Judith Williams, Jossey-Bass/John Wiley, 2004). *See also* It Pays to Ask: Negotiating Conditions for Leadership Success by Deborah Kolb and Jill Kickul (January 2006) CGO Insights, Briefing Note #23, Simmons School of Management.

<sup>6</sup> *Ibid*, describes four "tests" rooted in stereotypes about women and their roles in the workplace. One of them, "The Double Test" questions a woman's "style" —assertiveness can be confused with aggressiveness yet collaboration is confused with weakness.

<sup>7</sup> National Association of Women Lawyers Survey on Retention and Promotion of Women in Law Firms, 2006

<sup>8</sup> "Women Take Care; Men Take Charge" 2005 study by Catalyst, a research group focused on women in the workplace.

<sup>9</sup> Her Place at the Table, *op. cit.*, p.65. *See also* Best Practices for the Hiring, Training, Retention and Advancement of Women Attorneys, *op. cit.*, p.20.

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<sup>10</sup> Associate Marketing Mentor, <http://pm.typepad.com/associatemarketing/> discussing Ending the Gauntlet: Removing the Barriers to Women's Success in the Law, *op. cit.*

<sup>11</sup> Studies done by the Center for Work-Life Policy and the After the JD study by The NALP Foundation for Law Career Research and Education and the American Bar Foundation as cited in a talk delivered by Harvard Law School Dean Elena Kagan on Nov. 17, 2005, at the Association of the Bar of the City of New York.

<sup>12</sup> "Breakthrough Bargaining" (Kolb and Williams), Harvard Business Review, February 2001.

<sup>13</sup> The Shadow Negotiation: *How Women Can Master the Hidden Agendas that Determine Bargaining Success*, Deborah Kolb and Judith Williams, Simon and Schuster, 2000.

<sup>14</sup> Gallup Management Journal, The Collective Advantage, Fall, 2001.

<sup>15</sup> "Call to Action-Diversity in the Legal Profession" which makes a demonstrated commitment to diversity a criteria for selection and continued relationships with law firms by general counsel. Drafted by Roderick A. Palmore in 2004, more than 100 general counsel of major corporations have signed on.