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FROM THE UPCOMING ISSUE

Women in the profession: Staying on the job

Linda Hirshman/Special to The National Law Journal
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Well, we recently had the bar exam. In every state, thousands of would-be barristers lined up at testing centers to show what they knew about the elements of defamation and the difference between liability to a trespasser and an invited guest. A nationwide test ensured that no one practices law in the United States without a minimum familiarity with core concepts of American law.

More than half of the exam takers were women. They have been expensively educated, mostly at state law schools at taxpayers' expense. Most of them will pass the bar exam. But in 10 years, half of them, mostly the married ones with children, will have strayed from the profession, working either part-time or no time at all. Behemoth New York law firm Skadden, Arps, Slate, Meagher & Flom has assigned a woman partner to head up a program to try to help the runaway Portias stay connected to the firm and one day perhaps even to return. Famed Judge and University of Chicago Law School Senior Lecturer Richard Posner said on his blog a year or so ago that everyone connected with elite law schools knows that, of those training there, a lot more women than men will leave the profession.

In the "mommy wars" that have raged for the last couple of years, the alleged "80-hour week" of the corporate law firm is considered a knock-down argument for why women quit. Although the 80-hour week (4,160-hour year?) is mostly an urban legend, a high-powered legal career is a demanding life for a parent to lead. Law firms might have a lot of mentoring programs, but they won't be running daycare centers anytime soon, and the work available to people who are not available part of the time will never be the best work. A lot of women who see themselves as responsible for child care and housekeeping will have a hard time practicing law. Which makes me wonder why they are sitting for the bar, anxious to prove their qualification for the job. Maybe a liberal undergraduate education makes you a better child raiser but it's hard to see how an extended understanding of torts would be useful.

Is matrimony the goal?

One explanation that has surfaced in the debates is that the women go to graduate school to earn their MRS degree, looking for a high-earning mate who will enable them to compete in the bake-sale Olympics, which was their real career goal. This strategy makes sense in light of the heavily female population of undergraduate schools, where men are relatively scarce. If a woman is smart enough, she can go where the men go to learn how to earn a living and get a man who earns a living.

The question is: Why are the rest of us paying for their legal education? Not only do taxpayers pay for state law schools, the donors to private law schools get to deduct their donations from their federal income taxes, raising the taxes on the rest of us (or the deficit we pass on to our children). So the taxpayers pay a big chunk of the cost of educating lawyers at private schools, too. Then many

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One solution is for law schools to discriminate against women applicants as the undergraduate colleges now do, with all their talk of "balance" and their special football programs just for the guys. The Constitution stops state schools from discriminating, but most scholars believe that the private schools are still free to sort by sex. This is a blunt instrument, and I am not recommending it. Half or more of the female lawyers are still working away at the bar. And if the women are hungry and ambitious, law offers a very effective way of earning a decent living. But taxpayers do deserve some relief from this very inefficient version of The Dating Game.

Here it is. Men and women should get the same access to law school-same tuition, same scholarships, etc. If, however, 10 years after graduation, the law school graduate is not working full-time at some job for which law school is a reasonable preparation, he, or more likely, she, will have to give the school back the money that it spent educating him or her over and above whatever was paid in tuition. The refunds would be put in a fund for scholarships for law students who could not otherwise afford to go to law school.

I'd even go further and say that at private law schools, which are allowed to discriminate by sex, the funds should go to women who could not otherwise afford to go to law school. Women are still disproportionately poorer than men are, and families are still more willing to pay to educate their sons than their daughters. I'd be willing to bet that women otherwise too poor to go to law school wouldn't be so quick to quit.

Linda Hirshman is a graduate of the University of Chicago Law School and the author of [Get to Work: A Manifesto for Women of the World](#) (Viking 2006).

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