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"When Women Leave, Dollars Leave"

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Back in January, Harvard University President Lawrence H. Summers created a firestorm when he speculated that one of the reasons there were so few women in math and science was because of innate differences between men's and women's math and science abilities.

His remarks prompted a slew of media coverage about the genetic differences between men and women, particularly in the math and science arena. From those news reports, the consensus seems to be that, while there are definite hormonal and neurological differences between men and women, no reliable science has shown that those differences result in measurably different performance.

Comparisons of standardized test results present a mixed bag. In an international standardized test administered in 2003 by the international research group Organization for Economic Cooperation and Development to 250,000 15-year-olds in 41 countries, boys did moderately better on the math portion in just more than half the nations. For nearly all the other countries, there were no significant sex differences. In Iceland, however, the girls bested the boys. Interesting, huh?

So is it nature? Is it nurture? When it comes to math and science, there doesn't seem to be a definitive answer. But there is a growing chorus of science advocates - male and female - who maintain that to remain competitive, the United States needs to maximize the math and science potential of all of its students, not just the male ones.

The same can be said of women in the legal profession. For firms to maximize profits - to remain competitive in an increasingly competitive business - they need to find a way to slow the brain drain that occurs when some of our best lawyers drop out of the game.

I don't believe - nor have I ever heard anybody speculate - that men make better lawyers than women. In fact, in my two decades of working with and for both genders, and supervising lawyers of both genders, I can state unequivocally that women are every bit as good at lawyering as men are.

Why, then, are there still so few women partners, managing partners and general counsel? According to a 2003 American Lawyer survey (the last one available), the national average for female partners (equity and nonequity) among the top grossing 100 firms is 16 percent, up from 10.6 percent in 1992. (The American Lawyer is a Texas Lawyer affiliate.) An impressive leap, yes. But still not anywhere near the number of women who actually embarked on the partnership track.

Nary a Peep of Protest

The answer lies in something else the Harvard president said: He theorized that men are more willing than women to work 80-hour weeks.

You'll notice that there's been nary a peep of protest over that comment. That's because it's an undeniable fact that a huge percentage of women leave the workforce, if only temporarily, during their childbearing years. I couldn't find any statistics regarding the number of women lawyers who leave the workforce, but according to a recent Harvard Business Review study, 37 percent of the "highly qualified women" they surveyed left work at some point in their careers, compared with 24 percent of men. Almost half the women cited family responsibilities for their decision, versus 12 percent of the men.

Most troubling is the fact that the study shows 93 percent of the women who took time off from work wanted to return to their careers, but only 74 percent of them were able to do so - even though their breaks were often as little as one year.

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That women leave the workforce because of family responsibilities is undeniable. The question is, can we - and by "we," I mean the United States, the legal profession and women - afford to lose the contributions of some of our best and brightest? Is the legal profession so wedded to the notion of crushing work hours that it's willing to continue losing out on talent it spent many years and hundreds of thousands of dollars training?

So far, the answer has been an unqualified "well, maybe. Sort of. But not really." In other words, while many firms have written policies that allow reduced work hours, the hard part is making sure those policies work and that nobody is penalized for taking advantage of them.

The key ingredient among those firms that have had some success in addressing work-family conflicts is a true commitment to such initiatives by the firm's leaders. Unless the movers and the shakers at a firm genuinely care that their firm is watching millions of dollars worth of training leave on a regular basis - leaving for reasons the firm has the power to address - there will be no progress.

Long story short, that means we've got to convince a group that consists primarily of men who don't know the difference between a diaper and a pull-up that keeping those of us who can deliver a 30-minute sermon on the relative merits of Huggies vs. Pampers is good business.

It is. And we will. I just hope it's soon.