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Walking the Legal Tightrope: Solutions for Achieving a Balanced Life in Law

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Walking the Legal Tightrope: Solutions for Achieving a Balanced Life in Law

LESLIE LARKIN COONEY*

TABLE OF CONTENTS

I.	INTRODUCTION	421
II.	ALLEGED FOUNDATIONS FOR THE UNDERREPRESENTATION OF WOMEN IN LEADERSHIP ROLES	423
III.	THE REASONS WOMEN LEAVE THE PRACTICE OF LAW	429
IV.	THE BILLABLE HOUR	433
V.	PART-TIME: A SOLUTION?	437
VI.	ROLE OVERLOAD AND MENTAL HEALTH	442
VII.	THE MOVEMENT TO BALANCED HOURS	445
VIII.	MILLENNIALS AND NONLINEAR CAREER PATHS	449
IX.	THE INCREASING NEED FOR NETWORKING, RAINMAKING, AND MENTORING	453
X.	THE ROLE OF LAW SCHOOLS IN PREPARING STUDENTS AND LESSENING FUTURE ATTRITION.....	460
XI.	CONCLUSION	463

I. INTRODUCTION

For over twenty years, issues surrounding women and their status in the legal profession have been documented, analyzed, and reported.¹

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1. See generally Donna Fossum, *Women in the Legal Profession: A Progress Report*, 67 A.B.A. J. 578 (1981) (highlighting the progress of women in the legal profession

The American Bar Association (ABA) Commission on Women in its 1988 study concluded that a thorough reexamination of attitudes and structures within the legal profession was needed to remedy the underrepresentation of women in the positions of power within the profession—law firm partnerships and judicial appointments.² Nearly a decade later, the ABA Commission on Women found that little progress had been made in female representation and concluded the mere passage of time alone would not render sufficient corrections.³ Although the ABA did note that some advancement was made and some progress had occurred, the traditional attitude of those in the legal profession had not changed, and numerous barriers to progress still existed.⁴ The report identified concerns regarding the need to promote a balance between professional and personal life priorities for women in the legal profession.⁵

This concern about achieving balance in order to enrich the lives of women attorneys has grown today to become a problem of such proportions that many women now leave the practice of law because they find they cannot achieve a satisfactory quality of life within its strictures. This exodus not only affects the women who abandon a professional position in which they invested hard work, financial resources, and emotional wherewithal to achieve, but also our society in general. The underrepresentation of women practicing law impacts the culture of the legal profession⁶ and the quality of legal services offered

over the last 130 years from entrance into law schools to placement post-graduation); Deborah L. Rhode, *Perspectives on Professional Women*, 40 STAN. L. REV. 1163 (1988) (exploring the occupational inequality women face in the male-dominated professional legal setting based on cultural traditions, socialization patterns, and institutional structures, and the legal responses or alternatives available to answer these problems).

2. ABA COMM'N ON WOMEN IN THE PROFESSION, REPORT TO THE HOUSE OF DELEGATES 3, 17 (1988), <http://www.abanet.org/women/1988ReportToHouseOfDelegates.pdf>.

3. See generally ABA COMM'N ON WOMEN IN THE PROFESSION, UNFINISHED BUSINESS: OVERCOMING THE SISYPHUS FACTOR (1995).

4. *Id.*

5. *Id.* at 18.

6. See generally Robert MacCrate, *What Women Are Teaching a Male-Dominated Profession*, 57 FORDHAM L. REV. 989 (1989). MacCrate specifically states that “[o]nly as the distinctive viewpoint of women directly influences the culture of the legal workplace can we accommodate the differences that matter to both women and men. True equality in legal employment will be achieved only when the perspective of women becomes an integral part of law firm culture.” *Id.* at 990. This gender inequality not only affects females within the law firm setting but also within the judiciary. For instance, disparities such as these can negatively affect female sexual discrimination cases. Leslie M. Kerns, *A Feminist Perspective: Why Feminists Should Give the Reasonable Woman Standard Another Chance*, 10 COLUM. J. GENDER & L. 195, 209 (2000). “[L]egal disparities exist between women and men because when women bring legal action against their attackers or harassers, women are more likely to encounter a

to clients.⁷ Just as gender bias projects a negative message to clients,⁸ underrepresentation of women in the legal profession sends a message to clients that there is no room for diversity in a historically male-dominated legal profession and serves to negatively impact all women desiring to obtain the assistance of an attorney.⁹

II. ALLEGED FOUNDATIONS FOR THE UNDERREPRESENTATION OF WOMEN IN LEADERSHIP ROLES

Over the last few decades, researchers and commentators have come up with a number of different reasons to account for the underrepresentation of women in leadership roles in the legal profession. First,

male judge than a female judge.” *Id.* Although the sex of the judge should not be a factor in assessing whether sexual discrimination within the workplace occurred, it nonetheless is a cause for concern.

7. Deborah Rhode, *Expanding the Role of Ethics in Legal Education and the Legal Profession*, <http://www.scu.edu/ethics/publications/submitted/rhode/legaled.html> (last visited Apr. 1, 2010).

8. In a feedback study of forty-four executives, data revealed that women were twenty-five times more likely than men to be viewed in gendered terms. Denise Lyons & Connie McArthur, *Gender’s Unspoken Role in Leadership Evaluations*, J. HUM. RESOURCE PLAN. SOC’Y, Sept. 2007, at 24, 27, available at http://www.entrepreneur.com/tradejournals/article/169413774_2.html. The few gendered comments for men were generally positive, while the more prevalent gendered comments for women were either seemingly empathetic statements that referred to a women’s plight or were “stereotypical judgments about women’s capabilities as . . . leader[s].” *Id.*

9. Ellen S. Podgor, *Lawyer Professionalism in a Gendered Society*, 47 S.C. L. REV. 323, 335 (1996) (discussing approaches to end gender bias within the legal profession, including a call for outside regulation). Podgor describes four goals to improving professionalism that are each an essential aspect towards eliminating gender bias. *Id.* at 333–37. The first goal is improving the quality of service to clients through enhanced competence and integrity. *Id.* at 333–34. The second goal is improving services offered to the public through increasing accessibility. *Id.* at 335. The third goal is improving the legal profession through self-regulation of the profession and internal policing of improper conduct. *Id.* at 335–36. The final goal is improving the legal system through use of lawyers to help provide a fair, equitable, and honest system of government. *Id.* at 337. Aside from these goals, Podgor differentiates between a separatist approach to professionalism and gender bias problems through individual commissions and a mainstream approach that seeks to merge these two concepts to “accept a general correlation of all legal issues to gender.” *Id.* at 345–46. In essence, the argument for mainstreaming is that “[t]he linking of these groups in this common area provides a forum for progressive implementation of mutual goals” and can offer benefits beyond elimination of discrimination. *Id.* at 346.

women's underrepresentation in highly competitive and prominent professional careers [such as the legal field] is often touted as "innate" or "natural," based on women's supposed lower capacity for "abstract" thought or preference for motherhood. Western cultural and religious traditions assume that, for men, natural and normal behavior involves "tenacity, aggression, curiosity, ambition, responsibility and competition," and that, for women, normal behavior is "passive," "affectionate, emotional, obedient and responsive to approval." . . . "[P]rejudices" and "stereotyped roles" work to "naturalize" the subordination and exclusion of women in two distinct ways: by unwarrantedly attributing to women disqualifying traits, and by unwarrantedly characterizing stereotypically male traits as qualifications." As a result, certain careers (*fireman*, *policeman*, etc.) remain virtually closed to women largely because the characteristics associated with success in those careers are considered "manly" and women ipso facto are assumed to be less able. . . . In the law, for example, having created and maintained a system that favors white men, men expect women to advance to higher ranks once granted access to lower level jobs—despite the fact that the qualities required to be an effective lawyer, such as litigiousness, strength, and stubbornness, are qualities that our culture demeans in women.¹⁰

This notion that effective lawyering requires one to possess traditionally "male" traits reinforces the negative implications that underrepresentation by women presents. These innate gender roles come into play within the typical law firm, and thus, women's underrepresentation, exacerbated by the trend of early departure from the practice of law, highlights a number of concerns that can only be fixed from the inside out. Moreover, when women drop out of the practice of law at greater numbers than men, their departure calls into question whether gender differences will actually produce the different laws, practices, and legal methods postulated by scholars who looked to a time when women's values would be recognized and accepted in our legal system.¹¹

For years, the lack of women attorneys in leadership roles within law firms, corporations, and the judiciary was also attributed to the insufficient "pipeline effect."¹² Because greater numbers of women in the legal field

10. Elizabeth Sepper, *Confronting the "Sacred and Unchangeable": The Obligation to Modify Cultural Patterns Under the Women's Discrimination Treaty*, 30 U. PA. J. INT'L L. 585, 604–05 (2008) (footnotes omitted).

11. See Carrie Menkel-Meadow, *Mainstreaming Feminist Legal Theory*, 23 PAC. L.J. 1493, 1516 (1992) (postulating that the articulation of women's values into legal principles and practices would transform legal doctrines in numerous aspects); Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Women's Lawyering Process*, 1 BERKELEY WOMEN'S L.J. 39, 63 (1985); Deanell Reece Tacha, *Women and Law: Challenging What Is Natural and Proper*, 31 NOVA L. REV. 259, 264–65 (2007) (noting that although there have been efforts to increase some gender-neutral laws, history and social context are lopsided and "[g]uarantees of formal equality could not erase the law's foundations in male-centered assumptions and standards").

12. See, e.g., Mark M. Hager, *Sex in the Original Position: A Restatement of Liberal Feminism*, 14 WIS. WOMEN'S L.J. 181, 228–29 (1999); Judith S. Kaye & Anne C. Reddy, *The Progress of Women Lawyers at Big Firms: Steadied or Simply Studied?*, 76

were younger and therefore less experienced, analysts believed that the trend would change with the passage of time as the pool of experienced female attorneys grew exponentially larger.¹³ However, relief has not occurred, and the trend of a dearth of women leaders in these positions continues today.¹⁴ Professor Maria Pabon Lopez reports that although in 1990 the median age for lawyers in Indiana was thirty-five for women and forty-one for men, in 2004 the median age for women lawyers was forty and forty-nine for men.¹⁵ She concluded that the “gap between the ages of men and women has increased, possibly because the older, more experienced female attorneys may no longer be practicing law.”¹⁶ As Harvard Law School Dean Elena Kagan explains: “Women lawyers are not assuming leadership roles in proportion to their numbers.”¹⁷ Although women comprise nearly 30% of all lawyers, only 15% of general counsels of Fortune 500 companies, merely 17% of law firm partners, and only 25% of the federal judiciary are female.¹⁸ In 2001,

FORDHAM L. REV. 1941, 1945 (2008); Andrew Bruck & Andrew Canter, Note, *Supply, Demand, and the Changing Economics of Large Law Firms*, 60 STAN. L. REV. 2087, 2102–03 (2008). The pipeline effect is the theory that “even if women today start career ladders with equal credentials in equal numbers and encounter no discrimination, equal representation at the top will emerge not immediately but only gradually over the years it takes aspirants to reach upper echelons.” Hager, *supra*, at 228.

13. Kaye & Reddy, *supra* note 12, at 1945 (noting that although as hypothesized the number of women in the pipeline could assist in correcting gender disparity, the ranks of women partners have not matched the percentage of women available in the pipeline).

14. Maria Pabón López, *The Future of Women in the Legal Profession: Recognizing the Challenges Ahead by Reviewing Current Trends*, 19 HASTINGS WOMEN’S L.J. 53, 61 (2008).

15. *Id.*

16. *Id.* (citing THE SURVEY RESEARCH CTR. AT IUPUI, GENDER ISSUES WITHIN THE INDIANA JUDICIAL SYSTEM 6 (2005)).

17. See Honorable Ruth Bader Ginsburg, Women’s Progress at the Bar and on the Bench (Sept. 11, 2006), in 54 FED. LAW. 50, 51 (2007) (quoting Elena Kagan, Leslie H. Arps Memorial Lecture: Women and the Legal Profession—A Status Report (Nov. 7, 2005), in 61 REC. ASS’N B. CITY N.Y. 37, 40 (2006)).

18. CATALYST, WOMEN IN U.S. MANAGEMENT 1–2 (2009), http://www.catalyst.org/file/308/qt_women_in_us_management.pdf. Women held 15.7% of the Fortune 500 corporate officer positions in 2008 with corresponding figures of 15.4% in 2007 and 15.6% in 2006. *Id.* Women held 15.2% of the Fortune 500 corporate board seats in 2008 with corresponding figures of 14.8% in 2007 and 14.6% in 2006. *Id.* To put these figures in perspective, in 2008, women comprised 46.7% of the labor force and 50.8% of managerial, professional, and related positions. BUREAU OF LABOR STATISTICS, WOMEN IN THE LABOR FORCE: A DATABOOK 28 tbl.11 (2009), <http://www.bls.gov/cps/wlf-databook-2009.pdf>. As Justice Ginsburg explains:

another ABA commission concluded: “The pipeline leaks, and if we wait for time to correct the problem, we will be waiting a very long time.”¹⁹ Given the current rate, women will not approach numerical parity in law firm partnership until 2115.²⁰ Should we wait another 100 years or more?

At present, the pipeline is not supplying women in sufficient numbers to assume leadership roles within the legal profession, and the conclusion is inevitable that there exists a “brain drain” among female attorneys.²¹ We know that, when compared to men, women enter law schools in equal numbers, take bar exams in similarly proportionate numbers, and even enter into the practice of law in these same proportionate numbers.²² So what happens? Why do women leave the practice of law, and what is the effect of such an exodus?

Last term, 117 men, but only 26 women, argued cases before the U.S. Supreme Court, and 2,980 men, as opposed to only 1,603 women, elected to become members of the Court’s bar. No woman, to this date, has ever been appointed by the Court as special master in an original proceeding, that is, a case in which the Supreme Court is the tribunal of first and last resort. (The Court has original jurisdiction dominantly in cases between states of the United States, or between the United States and one or more states.) Twenty-three men, but only 16 women served as law clerks last term. The term that starts the first week in October will set a low for the decade: 30 of the new clerks are men, only seven are women.

Ginsburg, *supra* note 17, at 53. Partnership positions in Canadian firms show similar disparities. Kathleen E. Hull & Robert L. Nelson, *Gender Inequality in Law: Problems of Structure and Agency in Recent Studies of Gender in Anglo-American Legal Professions*, 23 L. & SOC. INQUIRY 681, 683–87 (1998) (reviewing JOHN HAGAN & FIONA KAY, *GENDER IN PRACTICE: A STUDY OF LAWYERS’ LIVES* (1995); MARGARET THORNTON, *DISSONANCE AND DISTRUST: WOMEN IN THE LEGAL PROFESSION* (1996); and JENNIFER L. PIERCE, *GENDER TRIALS: EMOTIONAL LIVES IN CONTEMPORARY LAW FIRMS* (1995)). For lawyers starting in firms in Toronto, “men have a 47% probability of making partner, compared to 34% for women.” *Id.* at 684.

19. DEBORAH L. RHODE, ABA COMM’N ON WOMEN IN THE PROFESSION, *THE UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION* 14 (2001), <http://www.abanet.org/women/publications/unfinishedagenda.pdf>.

20. Project for Attorney Retention, Best Practices, <http://www.pardc.org/BestPractices/> (last visited Apr. 1, 2010).

21. Brain drain is “the departure of educated or professional people from one . . . economic sector, or field for another usually for better pay.” MERRIAM-WEBSTER ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/brain+drain> (last visited Apr. 1, 2010). The term certainly encompasses more than just the legal field; in 2004, the Hidden Brain Drain Task Force was founded to persuade corporations to realize more fully the talent of women workers and to identify, develop, and promote corporate policies and practices that support not only women’s work needs but also their life needs. SYLVIA ANN HEWLETT, *OFF-RAMPS AND ON-RAMPS: KEEPING TALENTED WOMEN ON THE ROAD TO SUCCESS* xi (2007).

22. See, e.g., Bruck & Canter, *supra* note 12, at 2103; Nancy E. Shurtz, *Lighting the Lantern: Visions of a Virtual All-Women’s Law School*, 16 HASTINGS WOMEN’S L.J. 63, 77 n.55 (2004).

Although the “opt-out revolution”²³ is not a phenomenon found only in the practice of law,²⁴ the effects within the legal profession carry over to other professions. The practice of law has long been recognized as a fast track to positions of leadership. Given the social responsibilities of the legal profession in general,²⁵ when large numbers of highly qualified women elect to leave the practice of law, the profession has a responsibility to not only recognize this occurrence but also to analyze rigorously the data and its effects and to commit to a preservation of this talent within the profession.²⁶ Attorney attrition by any gender is financially costly.²⁷ The average cost to a law firm when an associate leaves has been documented at \$315,000;²⁸ while others estimate that it costs a firm 150% of a person’s annual salary when she quits.²⁹ The cost to society, however, is far greater. As Lauren Stiller Rikle, a partner at Bowditch & Dewey, stated: “[W]e are reaching a crisis point when it comes to the retention and advancement of women in the legal profession, and therefore a crisis point when it comes to women leaders generally.”³⁰

23. See Lisa Belkin, *The Opt-Out Revolution*, N.Y. TIMES MAG., Oct. 26, 2003, at 42. Opting out occurs when high-powered women leave the workplace to fulfill motherhood desires. *Id.* at 44.

24. Sylvia Ann Hewlett et al., *The Hidden Brain Drain: Off-Ramps and On-Ramps in Women’s Careers*, HARV. BUS. REV., Mar. 2005, at 11, 11. Hewlett highlights a survey of three graduating classes at Harvard Business School. *Id.* The survey indicates that only 38% of women graduates end up in full-time careers, and 33% of women holding an MBA no longer work full-time, compared to 5% of their male counterparts. *Id.*

25. Judith S. Kaye, *A Prologue in the Guise of an Epilogue*, 57 FORDHAM L. REV. 995, 996 (1989) (“Indeed, the legal profession, concerned with the rights of others, should be in the forefront of meaningful reform to effect genuine integration and equality within its own ranks.”).

26. Maryann Jones, *And Miles To Go Before I Sleep: The Road to Gender Equity in the California Legal Profession*, 34 U.S.F. L. REV. 1, 47–48 (1999).

27. See CATALYST, BEYOND A REASONABLE DOUBT: LAWYERS STATE THEIR CASE ON JOB FLEXIBILITY 6 (2006), <http://www.catalyst.org/file/19/beyondreasdoubtjobflexibility.pdf>; Linda Bray Chanow, *The Business Case for Reduced Hours*, PROJECT FOR ATT’Y RETENTION, http://www.pardc.org/Publications/business_case.shtml (estimating the cost to be \$200,000 for each departing attorney); Joan Williams & Cynthia Thomas Calvert, *Balanced Hours: Effective Part-Time Policies for Washington Law Firms: The Project for Attorney Retention, Final Report, Third Edition*, 8 WM. & MARY J. WOMEN & L. 357, 366 (2002) (estimating it costs a firm \$200,000 to replace a second-year associate, with other estimates ranging from \$280,000 to \$500,000).

28. CATALYST, *supra* note 27, at 6.

29. Chanow, *supra* note 27.

30. Sacha Pfeiffer, *Many Female Lawyers Dropping Off Path to Partnership*, BOSTON GLOBE, May 2, 2007, at A1.

Interestingly, some now ask: “[W]hy is the sex barrier not taken as seriously as the racial one?”³¹

To begin finding solutions to retain females within the legal profession, one can begin by looking to other professions and the corresponding work-life issues pertaining to women. Just as the medical field is experiencing an increase in women physicians at a rate parallel to or faster than women in the legal profession, it has suffered from a significant number of women leaving the field.³² Nonetheless, there are signs the health care profession will reverse this trend. Dr. John Bucholtz, director of Columbus Regional’s Family Medicine Residency, has reported that the demands on doctors have relaxed somewhat.³³ In part, this relaxation is due to changes in accredited residency programs, which adopted a work week maximum of eighty hours, and to the humanizing of the profession that women are bringing.³⁴ In regard to dentistry, over the past few decades women have increasingly entered the profession—a 2002 survey noted that three of the top ten reasons for choosing the profession related to work-life balance.³⁵ For female accountants, “being able to achieve a more desirable balance of work and family/ personal time was one of the advantages of an industry job.”³⁶ Further, many

31. Gloria Steinem, Op-Ed., *Women Are Never Front-Runners*, N.Y. TIMES, Jan. 8, 2008, at A23. Steinem noted that reasons for this include: sexism is still confused with nature, as racism once was; anything that affects males is seen as more serious than anything that affects “only” the female half of the human race; men feel they are regressing to childhood when dealing with a powerful woman; and there is still no “right” way to be a woman in public power without being considered a “you-know-what.” *Id.*

32. See Claire B. Salling, *Rowley: Work-Life Balance Difficult for Women in Medicine*, CHI. MAROON, May 22, 2009, available at <http://www.chicagomaroon.com/2009/5/22/rowley-work-life-balance-difficult-for-women-in-medicine>. Salling notes that although women outnumber men in medical school and the number of female physicians over the last thirty years has increased threefold, women still drop out of the field in large numbers, creating gender gaps. *Id.* Salling’s observations also express a lack of research into this problem, which results in the inability to help find solutions to the overall problem. *Id.*

33. Christopher Boyce, *Work-Life Balance, Compressed Pay Levels Also Issues in Medical Field*, COLUMBUS LEDGER-ENQUIRER, March 24, 2005, available at http://www.redorbit.com/news/health/138318/worklife_balance_compressed_pay_levels_also_issues_in_medical_field/.

34. *Id.*

35. Mark Scarbecz & Judith A. Ross, *Gender Differences in First-Year Dental Students’ Motivation To Attend Dental School*, 66 J. DENTAL EDUC. 952, 955–56 (2002), available at <http://www.jdentaled.org/cgi/reprint/66/8/952.pdf>. Specifically, the survey notes that the three reasons are: “[a] career in dentistry will give . . . enough time to be with . . . family”; “[d]entists have a flexible work schedule”; and “[d]entistry has more regular hours than other health related professions.” *Id.*

36. THE FAMILIES AND WORK INST., EXPERIENCES AND VIEWS OF CPAS IN INDUSTRY: PUBLIC ACCOUNTING—VS—INDUSTRY CAREER AND LIFE BALANCE ISSUES 19 (1995), http://www.aicpa.org/download/career/wofi/Experiences_Views_CPAs_Industry.pdf.

female accountants note that supervisor attitudes, company culture, and company policies help them find a balance between working and managing family life.³⁷ In general, it appears that “technology, healthcare, accounting, administrative and clerical jobs seem to be at the front of the wave in offering alternative scheduling solutions,” which lead to a better work-life balance.³⁸ In part, these professions are attractive to women due to consistent and average workweeks, although these professions are also noting the changing face of their respective professions and becoming more accommodating to their employees as a result. It is incumbent upon the legal profession to make similar adjustments.

III. THE REASONS WOMEN LEAVE THE PRACTICE OF LAW

A report by the MIT Workplace Center surveyed comparative career decisions and attrition rates of men and women in Massachusetts law firms and concluded that the most cited reason for women leaving law firms was “difficulty integrating work and family/personal life.”³⁹ Law firms have been notoriously family unfriendly.⁴⁰ The next two most cited reasons for women leaving were “long work hours” and “work load pressures,” with “poor promotion opportunities” and an “unsupportive work environment” following.⁴¹ About one-third of respondents listed “other”

37. *Id.* at 20.

38. Andrea McGovern, *Balancing Work, Life: Part-Time Professionals Tip the Scales*, TRI COUNTY BUS. J., Mar. 2007, available at <http://www.lakebusinessjournal.com/march2007.html>.

39. MONA HARRINGTON & HELEN HSI, WOMEN LAWYERS AND OBSTACLES TO LEADERSHIP: A REPORT OF MIT WORKPLACE CENTER SURVEYS ON COMPARATIVE CAREER DECISIONS AND ATTRITION RATES OF WOMEN AND MEN IN MASSACHUSETTS LAW FIRMS 12 (2007), http://web.mit.edu/workplacecenter/docs/law-report_4-07.pdf. In Toronto, this inability to balance work and personal pressures correlates to satisfaction of employment—women are less satisfied particularly because of the burden with child care. Hull & Nelson, *supra* note 18, at 686.

40. Melanie Lasoff Levs, *Best for the Business: “Top Workplace” Firms Garner Loyalty from Clients and Employees*, A.B.A. J., May 2008, at 34, 35. Levs quotes Larry Bodine as saying:

If you want to go on the mommy or daddy track, most firms will say, “That’s fine; you just added another three to five years to be considered for partnership.” It’s difficult to recruit women because they feel that somewhere down the line, they are going to have to choose between having a family and having a job, which is not a fair choice.

Id.

41. HARRINGTON & HSI, *supra* note 39, at 12.

reasons, many of which included family issues.⁴² Although men did not cite family as their main reason for leaving, their reasons often involved issues with the balance of work and personal life as well.⁴³ The most cited reasons for men were “long work hours” and “work load pressures,” with family reasons placing third.⁴⁴ Men also listed dissatisfaction with work responsibilities and the desire for more meaningful work as reasons for leaving law firm practice.⁴⁵

The *Update on Associate Attrition* produced by the National Association for Law Placement (NALP) Foundation has similar findings.⁴⁶ The participants included ninety-five law firms nationwide, representing all regions and firm sizes with the overall average associate attrition rate of 18%.⁴⁷ The study separated entry-level associates and lateral associates for purposes of polling their reasons for leaving.⁴⁸ In looking at the gender differences, the reasons for departure given by entry-level associates were a desire to gain a more regular schedule, which yielded 12% for women and 8% for men; better support for work-life balance, which garnered 10% of women and 7% of men; and family or dependent responsibilities, listed as a reason for 7% of women and 3% of men.⁴⁹ The pursuit of better partnership prospects was listed by 3% of women and 5% of men, while a desire to work in public interest yielded 4% of women and 2% of men.⁵⁰ These results are illustrated graphically in Table One:

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

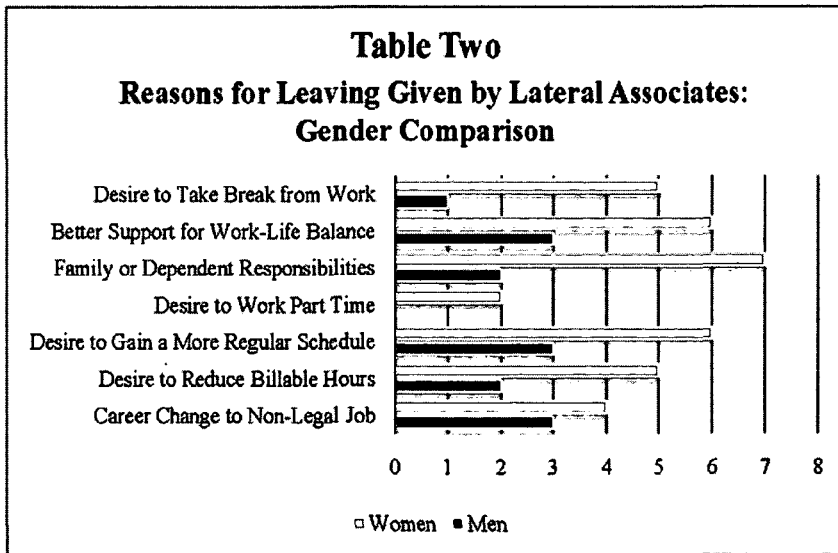
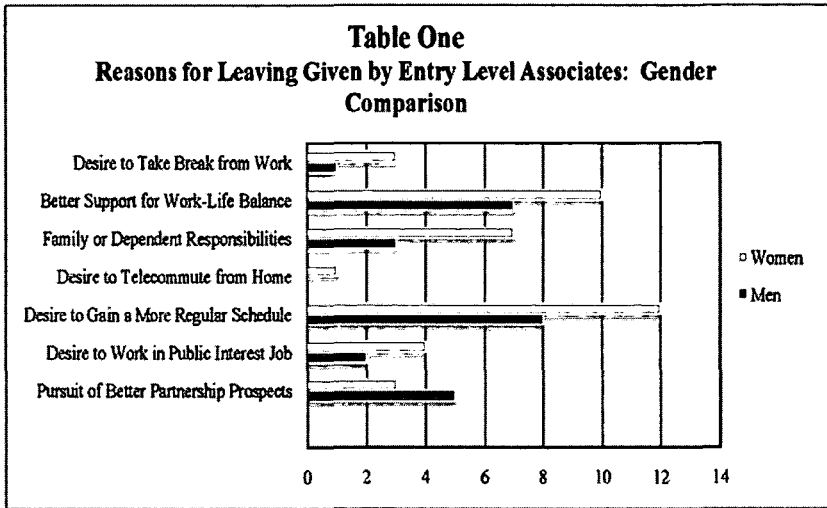
46. NALP FOUND., UPDATE ON ASSOCIATE ATTRITION: FINDINGS FROM A NATIONAL STUDY OF LAW FIRM ASSOCIATE HIRING AND DEPARTURES—CALENDAR YEAR 2007, at 24 (2008).

47. *Id.* at 6, 12. Even more striking than this 18% average attrition rate is that minority female lawyers have an even higher attrition rate; nearly 100% of these women leave large law firms within eight years of being hired. Jill Schachner Chanen, *Early Exits*, A.B.A. J., Aug. 2006, at 33, 34.

48. NALP FOUND., *supra* note 46, at 13–19.

49. *Id.* at 25 tbl.24.

50. *Id.*



The reasons for departure listed by lateral associates also showed gender disparities but continued with a trend of concern for work-life balance issues.⁵¹ The desire for a more regular schedule was listed by 6% of lateral associate women and 3% of lateral associate men; better support for work-life balance comprised 6% of women and 3% of men; and family or dependent responsibilities was selected by 7% of women and 2% of men.⁵² Four percent of women listed career change to a nonlegal job compared to 3% of men, while a desire to reduce billable hours was a reason for departure of 5% women and 2% men.⁵³ Table Two illustrates these results. Certainly the demands of family life are different for many women, but women's ambitions are also somewhat different. While money is often a prime motivator for men, other motivators, such as the quality of colleagues, recognition by superiors, and flexible work options, may strongly influence women.⁵⁴

Even so, money remains an issue within the firm setting. Although male and female associates may start at comparable entry-level pay, this parity does not continue even when women remain at the law firm.⁵⁵ As women move from the rank of associate to counsel, nonequity, and equity positions within their law firms, women are compensated at a lower rate than their male counterparts.⁵⁶ The greater the position the woman attorney has at the law firm, the greater the financial disparity.⁵⁷

51. *Id.* at 26 tbl.25.

52. *Id.*

53. *Id.*

54. HEWLETT, *supra* note 21, at 2.

55. STEPHANIE A. SCHARF ET AL., REPORT OF THE 2009 NAWL SURVEY OF THE STATUS OF WOMEN IN LAW FIRMS 12 (2009), <http://www.nawl.org/Assets/Documents/2009+Survey.pdf>.

56. *Id.*

57. *Id.* at 12–13.

IV. THE BILLABLE HOUR

The billable hour model⁵⁸ takes a toll on all attorneys, but it is particularly onerous for female attorneys⁵⁹ because of the likelihood that women will experience irreconcilable conflicts between billing minimums and family responsibilities.⁶⁰ Forty years ago, partners in law firms averaged 1200 to 1400 billable hours per year while associates averaged 1400 to 1600 hours.⁶¹ The number rose to 1800 in the 1980s,⁶² and in the 1990s, the figure was over 2000.⁶³ The current figure of 2200 billable hours per year for associates amounts to working twelve hours a day, five days a week, plus seven hours on Saturdays twice per month, with a total of three weeks of vacation per year.⁶⁴ Due to the drastic rise in the dependency

58. A billable hour is defined as “an hour that a lawyer spends engaged in work that can be charged to a client at the hourly rate.” DICTIONARY.COM, <http://dictionary.reference.com/browse/billable+hour?&qsrc=> (last visited Apr. 11, 2010). The billable hour model is an economic model introduced “to address antitrust concerns with bar association fee schedules, to provide lawyers with a better handle on their own productivity and, more urgently, to address clients’ demands for more information about the legal fees charged.” ABA COMM’N ON BILLABLE HOURS, ABA COMMISSION ON BILLABLE HOURS REPORT 2001–2002, at ix (Gary Hengstler ed. 2002), <http://www.abanet.org/careercounsel/billable/toolkit/bhcomplete.pdf>. However, “unintended consequences of the billable hours model have permeated the profession,” such that attorneys leave due to inability to balance their lives. *Id.* “The unending drive for billable hours has had a negative effect not only on family and personal relationships, but on the public service role that lawyers traditionally have played in society.” *Id.* For an in-depth study of the effects of the billable hour on law firms, see generally Susan Saab Fortney, *Soul for Sale: An Empirical Study of Associate Satisfaction, Law Firm Culture, and the Effects of Billable Hour Requirements*, 69 UMKC L. REV. 239 (2000).

59. Billable hours are even more onerous for women of color. One study, *Visible Invisibility*, found only 46% of women of color were able to meet their firm’s billable hour requirements. Chanen, *supra* note 47, at 35.

60. Kaye & Reddy, *supra* note 12, at 1962 (citing EMPLOYMENT ISSUES COMM’N OF THE WOMEN’S BAR ASS’N OF MASS., MORE THAN PART-TIME: THE EFFECT OF REDUCED-HOURS ARRANGEMENTS ON THE RETENTION, RECRUITMENT, AND SUCCESS OF WOMEN ATTORNEYS IN LAW FIRMS 7 (2000)).

61. Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 891 (1999) (citing WALT BACHMAN, LAW V. LIFE: WHAT LAWYERS ARE AFRAID TO SAY ABOUT THE LEGAL PROFESSION 103 (1995); WILLIAM G. ROSS, THE HONEST HOUR: THE ETHICS OF TIME-BASED BILLING BY ATTORNEYS 2, 3 (1996); Carl T. Bogus, *The Death of an Honorable Profession*, 71 IND. L.J. 911, 924 (1996)).

62. ROSS, *supra* note 61, at 20.

63. *Id.* at 27. Some articles suggest the number of billable hours during the 1990s could be as high as 2400 or more. See, e.g., Fortney, *supra* note 58, at 247.

64. Natasha Sarkisian, *Who Says Being a Lawyer Has to Suck?*, S.F. MAG., Jan. 2007, available at <http://www.sanfrancmag.com/story/who-says-being-lawyer-has-suck>.

on the billable hour model, the ABA created a Commission on Billable Hours and conducted a survey in 2002.⁶⁵ The study discussed the connection between the system of billable hours and the diminished mental and physical health of attorneys, their problematic personal and professional relationships, and the effect of billable hours on attorney attrition.⁶⁶ The survey found that an increasing number of attorneys indicate a preference for a pay cut to gain some control over their qualities of life rather than continuing to be bound to the billable hour.⁶⁷

The billable hour requirement encourages ethical shortcuts,⁶⁸ and “many of the legal profession’s contemporary woes intersect at the billable hour.”⁶⁹ The billable hour offers incentives for prioritizing profits and cutting ethical corners, which some consider “the most troubling aspect of the legal profession.”⁷⁰ The problem with the billable hour mindset is that

The typical attorney at a large law firm bills between 2200 and 2300 hours per year. Francesca Jarosz, *Tipping Back the Scales: Law Firms in Search of Work-Life Balance*, BUS. L. TODAY, Mar.–Apr. 2007, at 13, 13.

65. ABA COMM’N ON BILLABLE HOURS, *supra* note 58, at xii.

66. *See generally id.*

67. *Id.* at ix. One way to protect the billable hour model but still give lawyers some control over balance in their lives is to give them the option of maintaining the current billable hour rate at the same salary or increase the salary with increased hours due. *See* Stephanie Francis Ward, *Such a Deal: Does Perkins Coie Have the Best Time-Money Solution?*, A.B.A. J., Oct. 2007, at 29, 29. Perkins Coie, a Seattle-based law firm, presented this option to their attorneys, most of whom have accepted it with welcoming arms. *Id.* Giving the attorneys the choice of how much they work can actually prove to increase their work efforts due to their ability to have a perceived notion of control over their workload. One attorney at the firm noted: “I typically will work more than the requirement and earn more at the end of the year. But with kids at home, I appreciate the option.” *Id.* This mindset may fare well if other firms were to take note of it. *See also* Fortney, *supra* note 58, at 260–63 (surveying the willingness of attorneys to make less to work less).

68. Susan Saab Fortney, *I Don’t Have Time To Be Ethical: Addressing the Effects of Billable Hour Pressure*, 39 IDAHO L. REV. 305, 315 (2003). Some ethical shortcuts used by attorneys to increase their billable hours are “double-billing” and “re-cycling work.” Fortney, *supra* note 58, at 257. Double billing occurs when two clients are billed for work performed at the same time, whereas recycling work is when clients are billed by the hour for work previously created for a different client. *Id.* It is interesting to note, however, that as the firm size increases, some ethical dilemmas created by the billable hour appear to decrease. *Id.* at 258–59.

69. ABA COMM’N ON BILLABLE HOURS, *supra* note 58, at ix.

70. Ben Bratman, *Toward a Deeper Understanding of Professionalism: Learning To Write and Writing To Learn During the First Two Weeks of Law School*, 32 J. LEGAL PROF. 115, 120 n.27 (2008).

the essential characteristic of a profession is that it is able to monopolize the furnishing of a particular kind of service. Such a view of *profession* is naturally very business-oriented and cares primarily about protecting its own interests. Instead of emphasizing service to others, [or in this case service to clients,] it focuses on maximizing profits.⁷¹

In fact, “[t]he Model Rules’ Preamble suggests some restraint on self-interest, noting that tension may exist between ‘a lawyer’s responsibilities to clients, to the legal system, and the lawyer’s own interest in remaining an ethical person while earning a satisfactory living.’”⁷² Billable hour pressures decrease professional development, negatively impact mentoring relationships, and unduly place pressure on the lawyer-client relationship.⁷³ Focusing on the billable hour results in decreased participation in the important extra functions that enhance an attorney’s development, such as publication of articles, presentation at meetings, and participation in networking and professional associations.⁷⁴ Finally, the billable hour creates ethical dilemmas because “it rewards inefficiency[,] it encourages delay instead of settlement[, and] it creates a conflict of interest between attorneys, whose fees are based on time, and clients, who care only about a solution.”⁷⁵

The NALP Foundation’s 2005 study of attorney work-life balance indicated that 85.6% of supervised attorneys believed their managing attorneys had a minimum billable hour expectation.⁷⁶ Patricia Gillette, a member of the Opt-In Project, believes that the billable hour is at a breaking point for women.⁷⁷ The Opt-In Project has recommended that in order to retain talented women, law firms should rethink their traditional

71. Joseph E. La Rue, *Redeeming the Lawyer’s Time: A Proposal for a Shift in How Attorneys Think About—and Utilize—Time*, 20 NOTRE DAME J.L. ETHICS & PUB. POL’Y 473, 474 (2006) (footnote omitted).

72. Neil Hamilton, *Professionalism Clearly Defined*, 18 PROF. LAW. 4, 13 (2008) (quoting MODEL RULES OF PROF’L CONDUCT, Preamble ¶ 9 (2007)).

73. See Fortney, *supra* note 58, at 281–83, 288–92.

74. ABA COMM’N ON WOMEN IN THE PROFESSION, CHARTING OUR PROGRESS: THE STATUS OF WOMEN IN THE PROFESSION TODAY 7 (2006), <http://www.abanet.org/women/ChartingOurProgress.pdf>.

75. Mark E. Lacin, *Life Without an Hourly Rate*, COLO. LAW., Dec. 2007, at 67, 67.

76. SUSAN SAAB FORTNEY, NALP FOUNDATION, IN PURSUIT OF ATTORNEY WORK-LIFE BALANCE: BEST PRACTICES IN MANAGEMENT 104 (2005).

77. Anna Oberthur, *Firms Rethink Billable Hours To Retain Women*, DAYTON BUS. J., Dec. 10, 2007, <http://www.pardc.org/Publications/BetterOnBalance.pdf>; see also The Opt-In Project, <http://www.optinproject.org/> (last visited Apr. 3, 2010).

billable hour structure.⁷⁸ For example, a system measuring performance with set salaries that focuses on productivity, efficiency, and quality of work would relieve many of the work-family pressures women face as a result of the grueling schedule mandated by achieving high billable hours.⁷⁹

Law firms are traditionally tied to the billable hour; however, as the economic climate changes and clients become more demanding, reluctance toward other alternative billing methods may decrease.⁸⁰ Such arrangements have in the past constituted only a small part of total business, with billing by the hour still controlling, especially in the large firm setting.⁸¹ Alternative billing methods include flat fees to perform certain services or handle certain transactions, contingency fees based on the percentage of awards or successful outcomes, and also payments for meeting certain benchmarks or results.⁸² Although these alternatives and others, like the blended hourly rate, may appear to be a solution to the billable hour problem,⁸³ these too have problems varying with the type of arrangement, the client, and the legal issue at hand.⁸⁴ First, shifting

78. The Opt-In Project, *supra* note 77; see also OPT-IN PROJECT, PROJECT REPORT (2007), http://www.optinproject.org-a.googlepages.com/Opt-InProjectReport5_22_07_v4cs.pdf. Technology could also help lawyers in this regard. See Reid F. Trautz & Dan Pinnington, *Technology and Timekeeping Can Help You Capture More Time*, L. PRAC. TODAY, Apr. 2009, <http://www.abanet.org/lpm/lpt/articles/tch04091.shtml>.

79. See Oberthur, *supra* note 77 (“This latest thing is a recognition that our profession, in terms of the expectation of billable hours, has been kind of moving in the wrong direction and we wanted to take a step back and say, ‘Hey . . . this is reflective of our values.’”) (quoting Andrew Giacomini, managing partner of Hanson Bridgett Marcus Vlahos & Rudy, a 144-lawyer California law firm). See generally Scott Turow, *The Billable Hour Must Die: It Rewards Inefficiency. It Makes Clients Suspicious. And It May Be Unethical.*, A.B.A. J., Aug. 2007, at 32, 34–35.

80. See Jonathan D. Glater, *Billable Hours Giving Ground at Law Firms*, N.Y. TIMES, Jan. 30, 2009, at A1, A18; PROJECT FOR ATTORNEY RETENTION, BETTER ON BALANCE? THE CORPORATE COUNSEL WORK/LIFE REPORT 30–36 (2003), <http://www.pardc.org/Publications/BetterOnBalance.pdf> (discussing flextime, compressed workweeks, job sharing, part-time, and telecommuting as alternatives to the traditional work schedule).

81. Glater, *supra* note 80.

82. *Id.*; Jarosz, *supra* note 64, at 19–20. One large law firm has actually rethought its entire approach to the associate billable hour. Leigh Jones, *Firm Kills Billable Hour for First-Year Associates*, NAT’L L.J., Aug. 20, 2007, at 10, 10, available at <http://www.law.com/jsp/article.jsp?id=1187341325148>.

83. Even when some alternative billing arrangements are used, such as value billing, attorneys are still likely to keep track of billable hours to justify the reasonableness of the value billing fee and to prove compliance with the *ABA Model Rules of Professional Conduct*, as well as state bar regulations. See Ed Poll, *Will the Recession Kill the Billable Hour?*, L. PRAC. TODAY, Mar. 2009, <http://www.abanet.org/lpm/lpt/articles/fin03091.shtml>.

84. See generally Claude R. (Chip) Bowles, Jr. et al., *Lawyers in a Fee Quandary: Must the Billable Hour Die?*, 6 DEPAUL BUS. & COM. L.J. 487 (2008).

away from the billable hour would require an overhaul of many other things including work practices within the law firm, recruiting, and compensation, which all have been built around the billable hour.⁸⁵ This alone is cause for resistance, especially among managing partners.⁸⁶ Second, “to succeed with fixed fees [and other alternative billing methods], lawyers will require strong project management. But anyone who has ever worked at a law firm knows that most lawyers do not want to manage or be managed.”⁸⁷ Finally, law firms that have committed to adopting alternative billing methods “are still waiting for definitive proof of the payoff.”⁸⁸ With only ambiguous evidence that these new billing models may be as successful as the current model, what is the incentive to take these approaches?

V. PART-TIME: A SOLUTION?

According to the 2006 U.S. Census Bureau, roughly 93% of mothers are considered working mothers.⁸⁹ Statistics for working mother attorneys are significantly lower; of women attorneys between the ages of twenty-seven to thirty-two, only 24% are mothers, compared to roughly 65% of all women in the same age range.⁹⁰ This disparity does not just relate to the legal profession. In fact, “[a] woman’s ability to control the timing of motherhood and limit the size of her family is invaluable in ensuring her equal opportunity and choice in making life and career decisions.”⁹¹ A National Center for Health Statistics survey “observed the growing tendency of highly educated women to delay or forgo motherhood” for

85. Jim Hassett, *Hybrids and the Future*, OF COUNS., May 2009, at 5, 7–8.

86. *Id.*

87. *Id.* at 7.

88. *Id.* at 8.

89. Press Release, U.S. Census Bureau, Facts for Features (Mar. 15, 2006), http://www.census.gov/Press-Release/www/releases/archives/facts_for_features_special_editions/006560.html. This information is based on U.S. Census Bureau data, which states that there are 80.5 million mothers and 5.6 million stay-at-home mothers. *Id.* Using these numbers, the statistics regarding working mothers were calculated based on subtracting the stay-at-home mothers from the total number of mothers.

90. RONIT DINOVTZER ET AL., NALP FOUND., AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS 60 tbl.8.3 (2004), <http://www.nalpfoundation.org/webmodules/articles/articlefiles/50-AJD1.pdf>.

91. Jessica C. Kornberg, Comment, *Jumping on the Mommy Track: A Tax for Working Mothers*, 17 UCLA WOMEN’S L.J. 187, 192 (2008).

career advancement.⁹² This trend carries over to other professions as well.⁹³ However, other professions, such as healthcare and accountancy, are more receptive to work-life balance issues, while the legal profession has been notably slow taking into consideration motherhood and the impacting results on women's ability to balance professional and personal lives.⁹⁴

If associates often leave before they become profitable—40% leave before the third year and 60% leave before the fifth year—and if the industry estimate of replacing a second- or third-year associate is \$250,000 to \$500,000,⁹⁵ it makes economic sense for law firms to commit to an alternative solution along the lines of part-time employment to assist in balancing work with family life. Overhead expenses will not increase if a firm allows full-time employees to transition to part-time, so there will not be a financial detriment to firm profits caused by replacing and retraining new hires and by requiring clients to readjust to new attorneys. Put simply, retaining part-time employees and allowing employees to move into part-time positions will save law firms money.

Although part-time programs are already available to many lawyers, these programs are not widely used.⁹⁶ According to a NALP Workplace Questionnaire based on responses from 637 law offices nationwide,

92. *Id.*

93. *Id.* The converse of opting out of the workplace is the trend by professionals to opt out of having families:

These men and women forego parenting and stable, long-term relationships in surprisingly high numbers, believing that they cannot have both. This depressed childbearing and family formation by those in whom society has invested the most should be of deep concern. It is bad for children, bad for business, bad for the women and men themselves, and bad for everybody.

Robin Fretwell Wilson, *Keeping Women in Business (and Family)*, in *RETHINKING BUSINESS MANAGEMENT* 95, 95 (Samuel Gregg & James R. Stoner, Jr. eds., 2008).

94. Some firms, however, have taken note. For instance, in October 2001, Alston & Byrd, an Atlanta law firm, became the first law firm in Atlanta, and possibly the country, to provide "child-care facilities for the children of their lawyers and support staff." Robert W. Denney, *A Peach of an Idea from Georgia: Law Firms Providing Child Care*, L. PRAC., July–Aug. 2006, at 16, 16. Since then, two other Atlanta law firms have combined forces to open another child care facility. *Id.* This child care option allows working mothers, including attorneys and support staff within the legal profession, to ensure safety for their children, thus increasing the women's abilities to focus while at work. *Id.* at 16–17.

95. Courtney Goldstein, *Professional Development: The Expanding Scope of Lawyer Training Programs*, L. PRAC., Apr.–May 2008, at 48, 49.

96. Project for Attorney Retention, *Retention and Reduced Hours*, http://www.pardc.org/Publications/retention_and_hours.shtml (last visited Apr. 3, 2010); Press Release, Nat'l Ass'n for Law Placement, *Part-Time Attorney Schedules Available but Under-Utilized* (Nov. 17, 2005), <http://www.nalp.org/2005part-timeattorneyschedules> [hereinafter Press Release, *Part-Time Attorney Schedules*].

70.6% of these offices offer a part-time schedule program.⁹⁷ Although this may be a considerable amount, 96.5% of those permitting attorneys to work a part-time schedule determine the schedule on a case-by-case basis.⁹⁸ Curiously, NALP claims that almost 100% of firms in Fort Lauderdale and West Palm Beach offer part-time positions but then notes that of ten offices in the region, only 1.8% of attorneys are actually working part-time.⁹⁹ In Miami, 90.5% of firms offer this type of schedule, yet only 3.1% of the twenty-one offices surveyed actually have attorneys working part-time.¹⁰⁰ These statistics contrast remarkably when compared to part-time work in general, which garners roughly 14% of working individuals as compared to the average of 4% for working attorneys.¹⁰¹

Even more alarming is the stigmatization that occurs. Most of the lawyers who do work part-time are women; “women represented 71.6% of partners working part-time and 89.4% of associates working part-time.”¹⁰² Ninety percent of women lawyers surveyed by the *National Law Journal* said working part-time or even flex time hurts a woman’s career.¹⁰³ The perception, and often the reality, is that part-time positions will jeopardize advancement and delay or take the lawyer off the track

97. JUDITH N. COLLINS, NAT’L ASS’N FOR LAW PLACEMENT, FINDINGS FROM THE NALP WORKPLACE QUESTIONNAIRE 5 (2005), http://www.nalp.org/assets/193_05wqweb.pdf.

98. *Id.*

99. Press Release, Part-Time Attorney Schedules, *supra* note 96.

100. *Id.*

101. *Id.*

102. Press Release, Nat’l Ass’n for Law Placement, Few Lawyers Work Part-Time, Most Who Do Are Women (Dec. 7, 2006), <http://www.nalp.org/2006fewlawyerswork-part-time>; Project for Attorney Retention, *supra* note 96 (discussing the perception that it is rare for an associate to make partner while working part-time).

103. See Theresa M. Beiner, *Not All Lawyers Are Equal: Difficulties that Plague Women and Women of Color*, 58 SYRACUSE L. REV. 317, 326 (2008) (describing the perception that going to a part-time schedule is the “kiss of death”); Deborah K. Holmes, *Learning from Corporate America: Addressing Dysfunction in the Large Law Firm*, 31 GONZ. L. REV. 373, 400 (1996) (citing Emily Couric, *Women in the Large Firms: A High Price of Admission?*, NAT’L L.J., Dec. 11, 1989, at S12); Inst. Mgmt. & Admin., *Part-Time Lawyers Create a High-Quality and Effective Program*, COMPENSATION & BENEFITS L. OFF., OCT. 2005, at 1, 1 (observing that three out of four part-time associates believed that their schedules had already hurt their chances for partnership, and that thirty to forty percent of part-time attorneys reported that their professional relationships within the firm deteriorated when they went part-time); see also Project for Attorney Retention, *supra* note 96 (stating that 85% of Harvard business, law, and medical school graduates believed it would hurt their careers by working shorter hours after having children); PROJECT FOR ATTORNEY RETENTION, *supra* note 80, at 34 (discussing the difficulties faced by part-time in-house counsel).

towards partnership.¹⁰⁴ Part-time work creates a stigma of the elimination of advancement; the loss of status within their departments and firms; the transfer from preferred areas of practice; the lack of professional development due to unchallenging work; negative comments from colleagues, clients, and supervisors; and relegation to subpar office space.¹⁰⁵ In addition to its negative implications, a part-time schedule does not necessarily result in a true part-time position. Some data support the conclusion that working part-time at a law firm leads to “schedule creep.”¹⁰⁶ Schedule creeping occurs when there is a high demand for closer to full-time hours at the part-time salary so the part-time attorney works more hours than originally agreed, or when part-time lawyers are pressured into taking on the same caseload as attorneys working full-time.¹⁰⁷ This creeping causes frustration and raises potential issues if, or when, the attorney refuses to work the extra hours and is thereafter forced out under the guise of poor performance or lack of commitment to the practice of law.¹⁰⁸ Although rare, a few law firms have actually

104. See Kaye & Reddy, *supra* note 12, at 1958–59; Project for Attorney Retention, *supra* note 96.

105. See PROJECT FOR ATTORNEY RETENTION, *supra* note 80, at 35; Project for Attorney Retention, *supra* note 96.

106. See Kaye & Reddy, *supra* note 12, at 1959; Project for Attorney Retention, *supra* note 96.

107. See Kaye & Reddy, *supra* note 12, at 1959; Project for Attorney Retention, *supra* note 96.

108. Kaye & Reddy, *supra* note 12, at 1959. Some law firms that frown upon taking time off for family reasons or fail to assist men and women with growing families by adjustments to working schedules are noticing an increase in Family Responsibility Discrimination (FRD) cases. Joan C. Williams et al., *Law Firms as Defendants: Family Responsibilities Discrimination in Legal Workplaces*, 34 PEPP. L. REV. 393, 395–96 (2007). “When an employer treats an employee based on [traditional gender] stereotypes that reflect how it believes the employee will or should behave because of his or her family caregiving responsibilities rather than based on the employee’s individual interests or performance, it has engaged in FRD.” *Id.* In essence, FRD is discrimination based on family responsibilities. *Id.* at 395. There is no doubt that within the traditional law firm setting there are numerous situations that would present possible FRD causes of action. Of the FRD cases that have been brought in the legal setting, the situations have resulted from unequal distribution of cases and biased reviews after pregnancy, lack of advancement after motherhood, stigma from part-time schedules or temporary leaves, and traditional gender stereotyping roles. See *id.* at 404–11. With such an expansive foundation for bringing these actions, if law firms continue to act without taking into consideration work-life balance issues, law firms are opening themselves up to civil liability. Over the last decade, FRD lawsuits have increased over 400% compared to the decade prior. *Id.* at 396 (citing MARY C. STILL, CTR. FOR WORKLIFE LAW, UNIV. OF CAL., HASTINGS COLL. OF THE LAW, LITIGATING THE MATERNAL WALL: U.S. LAWSUITS CHARGING DISCRIMINATION AGAINST WORKERS WITH FAMILY RESPONSIBILITIES 7 (2006), http://www.uchastings.edu/site_files/WLL/FRDreport.pdf).

Regardless of the jurisdiction or the political spectrum, plaintiffs tend to be favored in FRD cases. *Id.* Plaintiffs’ attorneys are focusing these types of cases on family values,

promoted part-time associates to partnership levels,¹⁰⁹ but half of surveyed attorneys still doubt employers support flexible work arrangements.¹¹⁰

The adverse effects of working part-time do not, however, extend to relationships with clients.¹¹¹ Clients are interested in stability in the workplace.¹¹² Law firms that offer effective, well-structured part-time arrangements can actually increase the stability of their workforce, which, in turn, can support and increase overall client satisfaction.¹¹³ Nonetheless, the economic recession of 2008–2009 led to large terminations of lawyers by major law firms, and although men and women were generally downsized in proportion to their overall presence in the law firm, the exception was termination in part-time positions.¹¹⁴ Terminations of part-time lawyers

and this approach is proving persuasive to judges and jurors alike. *Id.* at 397. Not only are the employers susceptible to such cases, but potential liability is significant: “[A]t least seventy-five cases have yielded verdicts or settlements of over \$100,000, with the largest individual recovery at \$11.65 million and the largest class recovery at \$49 million.” *Id.* at 396 (footnotes omitted). FRD cases have a high likelihood of success over employment discrimination cases, proving that employers are susceptible to punishment for their adverse actions. *Id.* Because of this, law firms need to take into consideration the factors behind women attrition rates to determine if their actions are comparable to these FRD cases. If so, not only are there ethical, gender, and client concerns, but firms will also need to worry about potential civil liability and asset protection. *See id.* at 395–96.

109. Robert W. Denney, *More Buzz: Hot Law Practice Trends and Issues*, L. PRAC., Jan.–Feb. 2008, at 12, 14. A new trend in law firms is instituting nonequity partnerships, which provides a separate tier of nonequity or income partners. Robert W. Denney, *What Being a Nonequity Partner Means: From Lifestyle to Leadership Choices*, L. PRAC., Sept. 2007, at 12, 12. This allows firms to retain associates who may otherwise leave the firm, allows young lawyers time to develop, and allows equity partners to continue their profit sharing without interruption. *Id.* One advantage of nonequity partnership is that it “allow[s] associates to request temporary nonequity status if they wish to work part-time for a while (usually to start a family) but then return to full-time practice.” *Id.* at 13. This also allows attorneys with young and growing families the ability to gain the partnership label without the expense of buying into the firm or assuming the responsibilities required of equity partners. *Id.* at 12.

110. Deborah L. Rhode, *Balanced Lives for Lawyers*, 70 *FORDHAM L. REV.* 2207, 2208 (2002); *see also* Martha Neil, *Lawyers Shun Firms’ Offers of Part-Time Work*, CHI. DAILY L. BULL., Dec. 18, 2000, at 1, 1 (discussing the slow acceptance of part-time schedules).

111. Beiner, *supra* note 103, at 326.

112. Mark W. Bennett, Note, *You Can Take It with You: The Ethics of Lawyer Departure and Solicitation of Firm Clients*, 10 *GEO. J. LEGAL ETHICS* 395, 418 n.131 (1996).

113. Beiner, *supra* note 103, at 326 (noting that according to client satisfaction surveys, part-time status does not negatively affect client relations).

114. SCHARF ET AL., *supra* note 55, at 3–4.

disproportionately affected women, even after taking into account that women filled the majority of part-time positions.¹¹⁵

VI. ROLE OVERLOAD AND MENTAL HEALTH

Women's mental health issues in the legal profession have been linked to career dissatisfaction stemming from a lack of balance in the workplace,¹¹⁶ as well as gender-based discrimination in the structure, language, and procedures employed by those in the legal field.¹¹⁷ Dean Donna Eansor hypothesizes that law firms consistently have less than standard accommodations for child care, maternity, and caregiver schedules, which result in "role overload."¹¹⁸ The phenomenon of role overload is experienced when a person feels she is failing in her obligations and the expectations of her own self within society.¹¹⁹ Because of the effects of role overload, "[d]epression is three times higher among professional women than others."¹²⁰

Role overload for females has significantly increased the mental health issues suffered by the legal profession as a whole. In general, legal professionals are more likely to experience mental health problems than other professionals; in fact, depression is four times more likely in law than in other professions.¹²¹ Recent studies in Washington, Oregon, Minnesota, and New Jersey indicate that the prevalence of mental health

115. *Id.*

116. See Donna Eansor, *The Mental Health of Women Pursuing and Working in the Legal Profession: A Research Proposal*, 19 WINDSOR REV. LEGAL & SOC. ISSUES 1, 7-8 (2005).

117. Overt and subtle gender discrimination still exists today:

"Is there still a bias? Of course there is," says a legal profession insider who asked to remain anonymous. "I recently witnessed this at a major law firm: Two women associates are talking with a male associate. A male partner comes up and says, 'I have a golf game with a client and I need a fourth.' It doesn't even occur to him to ask or look at the women. And it's through golf and other outings with clients that young lawyers build relationships and advance in their firm."

Steve Taylor, *Pitfalls in the Partnership Pipeline: Less but Hardly Gone*, L. PRAC., Sept. 2007, at 45, 45.

118. Eansor, *supra* note 116, at 6-7.

119. See *id.* at 7.

120. Caroline W. Jacobus, *Legislative Responses to Discrimination in Women's Health Care: A Report Prepared for the Commission To Study Sex Discrimination in the Statutes*, 16 WOMEN'S RTS. L. REP. 153, 322 (1995).

121. *The Second Great Depression*, LAW. WITH DEPRESSION, http://www.lawyerswithdepression.com/second_great_depression.asp. Indeed, some attorneys in large firms find it "difficult to have a cat, much less a family." SUZANNE NOSSEL & ELIZABETH WESTFALL, PRESUMED EQUAL: WHAT AMERICA'S TOP WOMEN LAWYERS REALLY THINK ABOUT THEIR FIRMS 295 (1998).

issues and substance abuse by lawyers is substantial.¹²² Specifically, these studies note that the occupation with the highest rate of illegal drug use is that of the attorney.¹²³ Roughly “ten to twenty percent of attorneys and judges suffer from alcohol and drug dependency or mental health problems and . . . these problems significantly impact a professional’s performance.”¹²⁴

Due to the frequency of these problems among legal professionals, state bars are focusing on providing assistance through for-profit organizations.¹²⁵ Florida Lawyers Assistance, Inc. (FLA) Director Michael Cohen “estimates that while about 12 or 13 percent of people calling . . . for help were suffering from stress-related depression five years ago, that number is now up around 50 percent.”¹²⁶ FLA was “formed in 1986 in response to the Florida Supreme Court’s mandate that a program be created to identify and offer assistance to bar members who suffer from substance abuse, mental health, or other disorders which negatively affect their lives and careers.”¹²⁷ The increase in calls for help received by FLA from those with mental illnesses is generally considered positive because it means “that more lawyers [are] overcoming the stigma attached to depression and getting help, though usually not nearly as soon as their friends, families and therapists would like.”¹²⁸ Cohen notes:

122. Martin E.P. Seligman, *Why Are Lawyers So Unhappy?*, LAW. WITH DEPRESSION, <http://www.lawyerswithdepression.com/lawyersunhappy.asp>.

123. *Id.*

124. Kate T. Hlava, *A Survey of Recent Illinois Ethics Law: Professionalism in Practice*, 33 S. ILL. U. L.J. 23, 68 (2008).

125. See ABA Commission on Lawyer Assistance Programs, <http://www.abanet.org/legalservices/colap/> (last visited Apr. 5, 2010). The American Bar Association lists all Lawyer Assistance Programs (LAP) by state, provides publications on mental health related issues, and provides support to all bar associations and LAP programs to ensure effective recovery solutions. *Id.*; see also Florida Lawyers Assistance Program, <http://www.flalap.org/> (last visited Apr. 5, 2010).

126. Kim MacQueen, *FLA Handling More Mental Health Calls*, FLA. B. NEWS, May 1, 2008, at 1, 9.

127. Florida Lawyers Assistance Program, *supra* note 125; see FLA. B. R. 2-9.11 (2008) (mandating that the Florida Bar create or fund a program for the identification of members who suffer from drug dependency or psychological problems).

128. MacQueen, *supra* note 126, at 9.

The things that make us good lawyers makes us terrible patients. . . . We use our skills to argue that we don't have problems. There's this perception that we never show weakness. That makes us progress longer into mental illness and get into more and more trouble before we'll admit we need help.¹²⁹

In essence, lawyers who are used to fixing other people's problems are often the last to ask for help for themselves.¹³⁰

The notion that lawyers exist to fix problems, combined with stressful deadlines, pressure to reach billable hours quotas, and the relentless drive for advancement, makes attorneys among the professions most susceptible to mental health problems.¹³¹ The burden of "unrelieved stress can cause anxiety, inability to concentrate, shortened attention span, difficulty focusing on tasks, avoidance and 'burnout,'" while "[m]ore serious effects include depression, anger, exhaustion and chronic fatigue."¹³² Therefore, these mental health problems not only affect the individual attorney's health but also the productivity level within the firm and the individual's responsibilities outside the workplace. If the chronic stressors encountered by lawyers make them increasingly at risk to suffer from depression,¹³³ then it is logical to conclude that the woman lawyer who has the additional life pressures of being a single parent or a primary caregiver will be even more at risk for clinical depression. Through socialization, women are taught to be pleasers and thus find it more difficult to say "no" to additional task assignments. These women need to learn that saying "no" immediately to a senior partner or client when they are, or feel as if they are, overworked is not usually a relationship breaker.¹³⁴ Not surprisingly, lawyers who suffer from anxiety and depression are counseled to regain balance in their professional and personal lives.¹³⁵

129. *Id.*

130. See Keith Anderson, *A Lawyer's Tale: Recovering from Depression*, L. PRAC. TODAY, Aug. 2009, <http://www.abanet.org/lpm/lpt/articles/ft08094.shtml>; Jarosz, *supra* note 64, at 13 (finding that the Oklahoma Bar Association lost one member per month to suicide in 2006).

131. See Fortney, *supra* note 58, at 270–73 (noting that the billable hour innately increases the stress level of attorneys).

132. *Id.* at 270 (footnotes omitted).

133. Daniel T. Lukasik, *How Stress and Anxiety Become Depression*, TRIAL, Dec. 2008, at 32, 32.

134. Joshua Hornick, *Saying "No"—The Three Steps to Doing It Well*, L. PRAC. TODAY, Apr. 2009, <http://www.abanet.org/lpm/lpt/articles/mgt04091.shtml> (asserting that when an attorney is overworked, she is not being treated respectfully and is unlikely to be able to perform optimally).

135. G. Andrew H. Benjamin, *Reclaim Your Practice, Reclaim Your Life*, TRIAL, Dec. 2008, at 30, 32.

VII. THE MOVEMENT TO BALANCED HOURS

To make part-time programs effective, usable, and successful retention programs, one suggestion is for “balanced hours” policies that can “increase retention, morale, client satisfaction, and profitability.”¹³⁶ A balanced hours program is not like a traditional part-time program; rather, it allows “attorneys to work individually-tailored, reduced schedules . . . designed to meet the firm’s business needs while maintaining the attorney’s ability to work and to develop professionally without stigma. [These] programs involve active management of workloads in proportion to reduced hours, emphasize client service, and promote the values of the firm.”¹³⁷

Some law firms are taking advantage of a balanced hours approach in their efforts to keep attorney attrition rates down and to accommodate their attorneys’ personal lives.¹³⁸ For example, Wilmer, Cutler, Pickering, Hale & Dorr in Boston offers maternity and paternity programs and flex-time programs to parents of any age, attorneys with ill spouses, and attorneys with other outside demands.¹³⁹ All attorneys taking advantage of the balanced hours approach are still considered for firm advancement as well as partnership.¹⁴⁰ Similarly, another firm, Bingham McCutchen, seeks more than a single dimension attorney and offers various options to help accommodate outside needs.¹⁴¹ To support work-life balance while maintaining financial benefits to the firm, Bingham McCutchen provides internal support programs, such as New Moms Group, mentoring networks,

136. Williams & Calvert, *supra* note 27, at 360.

137. Project for Attorney Retention, About PAR, <http://www.parc.org/about/> (last visited Apr. 5, 2010); see also Nicole Buonocore Porter, *Re-Defining Superwoman: An Essay on Overcoming the “Maternal Wall” in the Legal Workplace*, 13 DUKE J. GENDER L. & POL’Y 55, 74–79 (2006) (summarizing the Project for Attorney Retention and its goals); see generally Joan C. Williams, *Canaries in the Mine: Work/Family Conflict and the Law*, 70 FORDHAM L. REV. 2221 (2002) (describing how the “maternal wall” eliminates women from law firm partnership).

138. Phyllis Weiss Haserot & Holly English, *Managing Work Expectations: Tools, Models, and Dialogue*, OF COUNS., July 2002, at 6, 7, available at <http://www.pdcounsel.com/managing%20work%20expect.html>; Natalie A. Herron, *The Juggling Act Continues*, MASS. LAW. WKLY., June 13, 2005, <http://www.masslawyersweekly.com/index.cfm/archive/print/id/339615>.

139. Herron, *supra* note 138.

140. *Id.*

141. *Id.*

alternate scheduling, and telecommuting.¹⁴² Given the right circumstances, the balanced hours approach has been successful within the firm setting.¹⁴³ A Washington, D.C. firm's litigation associate worked for three years from 7:30 a.m. to 3:00 p.m. and was promoted to partner under this working situation.¹⁴⁴ In fact, the firm made an effort not to schedule conferences late in the day in order to accommodate work and family conflicts and even offered the part-time attorney participation from home when late day scheduling could not be avoided.¹⁴⁵ Other firms that have made similar efforts have been able to remain highly profitable.¹⁴⁶

Attorneys of both genders believe they do not have enough time for their families and only one-third believe that their employers support balanced lives.¹⁴⁷ The firm of Harris, Wiltshire & Grannis was founded when all three partners had young children.¹⁴⁸ Harris, one of the founding partners, sought a working environment that did not force a 2000 hour billing quota so he could have the time and flexibility to coach little league for his son and be a room parent for his daughter.¹⁴⁹ Recognizing that many women with children were driven out of their law firms, he realized they could join him and provide an opportunity for a new law firm model.¹⁵⁰ Instead of a billable hours model, Harris's firm keeps overhead costs low, uses a compensation system under which each associate starts at the same base salary and earns points for seniority, and uses budget projections based on experience.¹⁵¹ Under this system, which equates to roughly 1700 billable hours per lawyer, when the firm is successful, everyone feels the benefits, and when projections are down, everyone feels the pain.¹⁵²

142. *Id.*

143. Haserot & English, *supra* note 138, at 8.

144. *Id.* at 8–9.

145. *Id.*

146. *Id.* at 9. Examples of such firms include Dickstein Shapiro Morin & Oshinsky, LLP; Arnold & Porter; Shearman & Sterling; Hogan & Hartson, LLP; and Palmer & Dodge. *Id.*

147. ABA YOUNG LAWYERS DIV., CAREER SATISFACTION SURVEY 29 (2000); Gregory J. Mazares, *Associate Retention for Law Firms: What Are Your Lawyers Saying About You?*, 29 CAP. U. L. REV. 903, 905 (2002).

148. Williams & Calvert, *supra* note 27, at 422.

149. *Id.*

150. *Id.* “[T]wo thirds of highly qualified women have discontinuous or nonlinear careers. Thirty-seven percent take an off-ramp at some point in their careers, voluntarily quitting their jobs for a short period of time. Another 30-plus percent take . . . a reduced-hour job, a flexible work arrangement, [and] a telecommuting option.” HEWLETT, *supra* note 21, at 14.

151. Williams & Calvert, *supra* note 27, at 422–23.

152. *Id.*

Another firm, Sullivan, Weinstein & McQuay, has five of their thirteen attorneys working a balanced hours program.¹⁵³ The system works because the firm keeps other costs at a minimum as compared to the large law firms, thereby using its finances to its advantage. The firm has no secretaries, lawyers type their own letters on equipment provided by the firm, and they do not charge for minor things like copies to clients or cab rides.¹⁵⁴ Although this flexible work schedule may result in slightly less income, it leads to better overall morale, which in turn positively affects the entire working environment.¹⁵⁵ A representative from Kirkpatrick & Lockhart Nicholson Graham has noted that since launching its balanced hours program in January 2006, “[i]t’s really improved [the attorneys’] quality of life and, with that, we feel we improve the quality of service to our clients.”¹⁵⁶ Mayer Brown has roughly sixty-seven of its one thousand attorneys working a balanced hours program and is supportive of attorneys with family issues, such as Allen Erenbaum who works 80% of a full-time schedule in order to care for his nine-year-old autistic son.¹⁵⁷ Overall, the firms offering balanced hours programs “are successful financially because they control costs, use technology extensively in the office and home, and experience low turnover from happy, satisfied attorneys.”¹⁵⁸ Whether or not a woman decides to become an attrition statistic depends in large part on whether her employer will offer imaginative support and flexibility in the workplace.¹⁵⁹ Not only does a balanced hours approach create a place where people want to work, but it also resonates with clients. Some clients look for law firms that are diverse and inclusive while other clients not only appreciate family-friendly policies by their law firms but also seek advice on how to create this type of work environment for their own businesses.¹⁶⁰

To put a balanced hours approach into practice, a law firm must first have the support of the law firm’s leadership, publicize the policy to the

153. *Id.* at 423–24.

154. *Id.* at 424. One reason the firm does not charge for minor expenses is because it figures that it costs more to keep track of billing for such petty things. *Id.*

155. *Id.*

156. Jarosz, *supra* note 64, at 19.

157. *Id.*

158. Haserot & English, *supra* note 138, at 9.

159. HEWLETT, *supra* note 21, at 11.

160. Levs, *supra* note 40, at 35.

firm, and train all attorneys about the program.¹⁶¹ Attorneys not using the program need to learn about it to appreciate what benefits it can bring to the entire firm and to assist in overcoming any negative assumptions they may have about those who do participate in the program.¹⁶² Changing the language of what constitutes success is helpful toward this end. For instance, care must be taken to avoid the stigma of a balanced hours approach, and encouragement is needed to help everyone understand that the concept does not change a lawyer's commitment to her job.¹⁶³ This is particularly important because many characteristics traditionally associated with women are deemed incompatible with the conventional law firm perception of success and professional achievement. For example, there is a notion that women innately have an ethic of care characteristic that amplifies differences between the genders and their abilities in the legal workplace.¹⁶⁴ In essence, "[t]he ethic of care is a decisionmaking preference that emphasizes interpersonal harmony and mercy"; it is thought that women "make decisions by avoiding harm, seeking to maintain and restore relationships, protecting others from hurt, and assessing the relative harm of various choices to and the vulnerabilities [of] the parties involved."¹⁶⁵ This contrasts with the "rights or justice orientation" associated with male attorneys, which alleges that their "decisions [are made] by weighing conflicting rights and duties, seeking fairness, justice, and equality, and maintaining and applying rules, standards, and role obligations to arrive at clear, absolute answers to dilemmas."¹⁶⁶ In 1994, a study found that 17% of male attorneys espoused an ethic of care approach compared to 43% of female attorneys.¹⁶⁷ This study also found

that the ethic of care was linked to career dissatisfaction among female attorneys. In this study, attorneys who espoused an ethic of care in moral decisionmaking were less satisfied with the prospect of a lifetime career in law practice than were attorneys who adopted a justice or rights orientation to moral decisionmaking.¹⁶⁸

161. See generally Williams, *supra* note 137, at 2234–38.

162. *Id.* at 2236.

163. *Id.*

164. Susan Daicoff, *Lawyer, Be Thyself: An Empirical Investigation of the Relationship Between the Ethic of Care, the Feeling Decisionmaking Preference, and Lawyer Wellbeing*, 16 VA. J. SOC. POL'Y & L. 87, 115–16 (2008).

165. *Id.* at 115.

166. *Id.*

167. *Id.* at 118.

168. *Id.* (footnotes omitted).

Because this ethic of care notion is present within the legal field, programs such as balanced hours help raise the level of satisfaction among female attorneys, which correlates to lower attrition rates.

However, attorneys who actually use the program will need to learn how to plan for proper implementation and adjust the firm's format for keeping the necessary parties informed of scheduling, assignment status, technical support, and other necessities related to maintenance of a working law firm. Finally, the use of a "balanced hours coordinator" is critical for monitoring the arrangement from both the viewpoint of the law firm and from that of the employee. In sum, there is ample research that suggests that law firms can successfully implement balanced hours programs and workplace policies that will help lawyers reach a better balance between personal and professional interests and to help give women attorneys equal opportunities within the profession through encouragement and retention in a highly productive and satisfying environment.¹⁶⁹

VIII. MILLENNIALS AND NONLINEAR CAREER PATHS

Although women's attrition rates and career paths have been closely studied over the last few decades, recent research indicates a striking increase in nonlinear career paths due to a change in mentality in younger generations. Close to 60% of highly qualified professional women follow nonlinear career paths.¹⁷⁰ A nonlinear approach is expanding to men as well as women who are part of the Millennial generation.¹⁷¹ Millennials are those persons born after 1981, and they are quite different from their predecessors, "Generation X."¹⁷² Members

169. Steven K. Berenson, *Creating Workplace Solutions for Women Attorneys: Report of the Lawyers Club of San Diego Balance Campaign*, 28 T. JEFFERSON L. REV. 449, 476-77 (2006).

170. Hewlett et al., *supra* note 24, at 14. This includes those women who take a reduced-hour job, a flexible work arrangement, and a telecommuting option, plus the more than 30% who "off-ramp" at some point in their careers. *Id.*

171. Kathryn Alfisi, *Mentoring Opportunities for Today's Lawyers*, WASH. LAW., July-Aug. 2006, at 30, 33.

172. Generation X consists of those people born between 1966 and 1981. Lisa Brennan, *Pitching the Gen-X Jury: As Jurors Get Younger, Law Schools are Thinking More Like MTV*, NAT'L L.J., June 7, 2004, at 1, 1. The generation is called X because the symbol connotes an unknown or a mystery. Elizabeth A. Foley, *The Changing Face of Juries: Understanding Generation X*, CHI. B. ASS'N REC., Nov. 2000, at 28, 28. For more information regarding Generation X, see generally PETER SACKS, GENERATION X

of this generation prefer the label “Millennial” to others because of their expressed wish not to be associated with Generation X.¹⁷³

The core personality traits of Millennials include confident, conventional, sheltered, team-oriented, achieving, and pressured.¹⁷⁴ Millennials are ambitious, demanding, and they question everything.¹⁷⁵ Just as law professors had to adjust teaching styles to reach this generation of law students, so now will law firm management and coworkers encounter the need to adjust to this next generation of new attorneys.¹⁷⁶ For instance, if a Millennial does not find a job challenging, that Millennial is likely to become bored and look for change.¹⁷⁷ Millennials undoubtedly seek more work-life balance, especially a “desire to shape their jobs to fit their lives rather than adapt their lives to the workplace.”¹⁷⁸ Because they have watched their parents devote their entire lives to a company only to be summarily downsized, today’s young workers are unwilling to give up family time to employers who are unlikely to give them long-term security in return for their long work hours.¹⁷⁹ They show a strong work ethic and seem to have more concern about making money than previous

GOES TO COLLEGE 124 (1996); BRUCE TULGAN, *MANAGING GENERATION X: HOW TO BRING OUT THE BEST IN YOUNG TALENT* 37–38 (2000).

173. See generally WILLIAM STRAUSS & NEIL HOWE, *GENERATIONS: THE HISTORY OF AMERICA’S FUTURE, 1584 TO 2069*, at 335–43 (1991) (contrasting the negative stigmas and societal views associated with Generation X individuals with the change in the popular culture, upbringing, and treatment of the Millennials).

174. Tricia Kasting, Commentary, *The “Millennial” Law Student Generation*, 186 N.J. L.J. 265, 265 (2006). The author describes “confident” as expecting good news and believing in themselves; “conventional” as accepting social rules; “sheltered” as having been kept from harm’s way and having highly structured lives; “team-oriented” as liking to work together and keeping in contact with peers; “achieving” as expecting to accomplish a lot; and “pressured” as feeling much is expected from them. *Id.*

175. Nadira A. Hira, *Attracting the Twentysomething Worker*, CNNMONEY.COM, May 15, 2007, http://money.cnn.com/magazines/fortune/fortune_archive/2007/05/28/100033934/.

176. Ron Alsop, *The “Trophy Kids” Go to Work*, WALL ST. J., Oct. 21, 2008, at D1.

177. *Id.* In addition, it has been noted that job turnover can be attributed to when “individuals are not getting what they want from their jobs.” Marcia Pennington Shannon, *Recruiting and Retaining Lawyers: A Generational Approach*, L. PRAC., June 2006, at 38, 39. When this occurs to members of newer generations, they “are much more likely to change jobs to find satisfaction.” *Id.*

178. Alsop, *supra* note 176; RON ALSOP, *THE TROPHY KIDS GROW UP: HOW THE MILLENNIAL GENERATION IS SHAKING UP THE WORKPLACE* 7 (2008) [hereinafter ALSOP, *THE TROPHY KIDS GROW UP*].

179. Seema Nayyar, *Focus on the 100 Best: Talking About My Generation*, WORKING MOTHER, <http://www.workingmother.com/web/text/plain/?jsessionid=5162816D87DD88EC9751ACACBA900C82?service=direct/1/ViewArticlePage/dlinkFullArticle&sp=604&sp=94>.

generations.¹⁸⁰ Millennials are most interested in competitive salary and flexibility in scheduling.¹⁸¹ By the numbers,

[m]ore than 85% of hiring managers and human-resource executives said they feel that [M]illennials have a stronger sense of entitlement than older workers The generation's greatest expectations [are]: higher pay (74% of respondents); flexible work schedules (61%); a promotion within a year (56%); and more vacation or personal time (50%).¹⁸²

This latest generation of lawyers demands a management style unlike any before them, and although they are team-oriented, they demand to be known on an individual basis.¹⁸³ These new demands and this generational attitude prove that

[g]one are the days where the steady 9 to 5 job with two weeks vacation will entice the prospective employees. [Millennials] demand[] flexibility in their careers. Work/life balance is more than just a pipe dream, and for most it's a reality worth fighting tooth and nail to obtain. The separation between work and life is blurred as [Millennials] seek[] flexibility and variation in the workplace. In the past two years, the number of U.S. employees working remotely at least one day per month increased 39 percent, from 12.4 million in 2006 to 17.2 million in 2008

If an employer leaves no room for compromise, [Millennials have] no problem packing up and searching for a position that will fill this desire. Regardless, don't be fooled. They are obsessed with productivity and have no problem working longer hours as long as it fits into their schedule.¹⁸⁴

Some recent reports document a number of different reasons that Millennial males, and males in general, leave the practice of law.¹⁸⁵ First, they are more likely to marry professional women and experience problems due to two professionals trying to meet the demands of the workplace with neither of them available to handle family concerns.¹⁸⁶ A second reason is that these Millennial males experienced isolation from

180. ALSOP, THE TROPHY KIDS GROW UP, *supra* note 178, at 6–7.

181. For a look at Millennials by the numbers, see BNET Editorials, *Generation Y by the Numbers*, BNET, http://www.bnet.com/2403-13059_23-201227.html.

182. Alsop, *supra* note 176.

183. ALSOP, THE TROPHY KIDS GROW UP, *supra* note 178, at 6–7.

184. Anthony Portuesi, *Gen Y in the Workplace*, SPARXOO.COM, Mar. 31, 2009, <http://sparxoo.com/2009/03/31/gen-y-in-the-workplace/>.

185. Chanow, *supra* note 27. Although not distinguishing between male attorneys of the Millennial generation and other generations, Chanow indicates that all males of all generations are leaving the practice of law on account of different dynamics all centered around the family. *Id.*

186. *Id.*

their own fathers and do not want that to happen to their children.¹⁸⁷ Thus, they place a premium on time spent with their own children and will reduce their working hours to become more active in their children's lives.¹⁸⁸ Men, however, often have a better comfort level than women when asking for accommodations for reduced hours.¹⁸⁹ "Now work-life balance is 'moving further away from being a mommy's issue,' and that's helped bring changes"¹⁹⁰

Although the demand for more flexibility by Millennials of both genders could cause resistance in a law firm environment,¹⁹¹ it is also quite likely that Millennial attorneys will accomplish most tasks with less bureaucracy and paperwork thus saving costs and staff. Millennials have grown up with an "explosion in communication technology" to the point where for some "email is too slow," relationships are developed online, and some "lead second lives online."¹⁹² These technological advances continue to enhance "the practice of law and enable [attorneys] to deliver services to . . . clients more quickly and with greater efficiency," and no one is leading the way with these technologies more than the Millennials.¹⁹³ However, some still feel:

Rapid access to more information does nothing for our ability to properly use that information. Instant communication often lacks thoughtfulness or wisdom. Online communication lacks context and nuance and often results in communication that is incomplete or misunderstood. Access to software or forms is no substitute for legal judgment. A virtual relationship is no substitute for a real one.¹⁹⁴

Additionally, technology can strain the balance Millennials crave because it prevents lawyers from having any real downtime or escape because they are on call twenty-four hours per day, seven days per week via their Blackberries.¹⁹⁵ Nonetheless, proposals such as FACTS, an

187. *Id.*

188. *Id.*

189. Martha Fay Africa, *The Opt-Out Alternative*, L. PRAC., Apr. 2004, at 41, 43. The author also indicates that "only those who are confident, well liked, well regarded and 'good' to work with succeed when asking for accommodation." *Id.*

190. Becky Beaupre Gillespie & Hollee Schwartz Temple, *Mom Makes It Work*, A.B.A.J., Oct. 2009, at 32, 33.

191. Stephanie Francis Ward, *The Ultimate Time-Money Trade-Off*, A.B.A.J., Feb. 2007, at 24, 24. Some law firm partners wonder whether the new generation of lawyers does not want to work as hard as they did, and to quote one former general counsel, "Firms are struggling with the long-term effect of associates not wanting to work as hard." *Id.* (internal quotation omitted).

192. Harper Estes, *A Reluctant Futurist*, 71 TEX. B.J. 728, 728 (2008).

193. *Id.*

194. *Id.*

195. Gillespie & Temple, *supra* note 190, at 33.

acronym for an innovative approach offering several options for lawyers seeking reduced schedules, are appearing with increased regularity.¹⁹⁶

An increasing number of law firms are recognizing the need to provide more management and leadership training for Millennials not merely to answer the high attrition rates but also to develop Millennials into well-rounded lawyers.¹⁹⁷ In 2006, a group of law students at Stanford Law School founded an organization focusing on improving quality of life in the legal profession known as Law Students Building a Better Legal Profession.¹⁹⁸ The organization publishes a ranking of law firms based upon how the firms treat employees and the organization's members vow not to work for firms who received low ratings.¹⁹⁹ These efforts have paid off because the organization has now established chapters at additional law schools.²⁰⁰ Overall, it is apparent that Millennials, whether they are male or female, value work that has meaning and learning potential, define success in multiple ways, and they are more inclined to look for and accept multiple opportunities in a nonlinear career trajectory.²⁰¹

IX. THE INCREASING NEED FOR NETWORKING, RAINMAKING, AND MENTORING

The American philosopher and social theorist, Eric Hoffer, noted that “[i]n times of change, learners inherit the earth, while the learned find themselves beautifully equipped to deal with a world that no longer exists.”²⁰²

One of the most important tools attorneys can use to expand their business development skills, professional relationships, and client base is networking—building relationships and connections.²⁰³ However, despite this important career tool, many attorneys “feel they do not have time,” and therefore, busy and stressed attorneys tend to cross networking

196. *See id.* at 34. “FACTS stands for fixed, annualized, core, targeted and shared hours.” *Id.*

197. Denney, *supra* note 109, at 14.

198. Lisa Belkin, *Who's Cuddly Now? Law Firms*, N.Y. TIMES, Jan. 24, 2008, at G1.

199. *Id.*

200. *Id.*

201. *See Shannon, supra* note 177, at 38.

202. Estes, *supra* note 192, at 728.

203. Deborah Epstein Henry, *Business Development in a 24/7 World*, DIVERSITY & B., May–June 2007, at 16, 16.

off the list of things to do first.²⁰⁴ The neglect of networking in an attorney's career is an issue that is "even more acute for women."²⁰⁵ First, female lawyers may often be excluded from helpful networking opportunities.²⁰⁶ For instance, sporting events and golf courses are considered an "old boys' network" venue that is traditionally exclusive to males, and thus, "[w]omen may feel shut out of access."²⁰⁷ Second, because women are traditionally considered responsible for child care, the need to fulfill home duties minimizes their ability to partake in evening marketing and networking opportunities.²⁰⁸ Finally, some allege that women "tend to have more difficulty translating personal relationships into professional dealings, and have a harder time with self promotion or simply taking credit."²⁰⁹ This limitation on networking opportunities combined with the inability to take advantage of selling themselves to others significantly impedes women's abilities for business development and growth. As one commentator put it, "many of the departing associates are women unwilling or unable to balance the long hours with their family responsibilities and . . . lawyers unable to navigate the competitive pressure without mentors and the social networks that would enable them to develop a book of business."²¹⁰

This problem is noticeable and some law firms are making strides to minimize attrition of women attorneys by forming women's initiative committees to "provide mentoring, networking, and marketing opportunities for women lawyers, as well as devis[e] and implement[] policies to help lawyers (male *and* female) better juggle their competing work/family priorities."²¹¹ Flex-Time Lawyers LLC, a consulting firm advising law firms and corporations on retention and promotion issues,²¹² and *Working Mother* magazine recently issued their annual list of best law firms for women and noted that 98% of the firms making the list hosted networking groups for female attorneys.²¹³ Furthermore, 66% of these firms have specific budgets targeting business development

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. Bruck & Canter, *supra* note 12, at 2105.

211. Kathleen J. Wu, *Diversity Is a Journey, Not a Destination*, 71 TEX. B.J. 142, 143 (2008).

212. Flex-Time Lawyers LLC, <http://www.flextimelawyers.com/about.asp> (last visited Apr. 5, 2010).

213. Jennifer Owens & Suzanne Riss, *50 Best Law Firms for Women*, WORKING MOTHER, Aug.-Sept. 2008, at 61, 61.

initiatives and training for women.²¹⁴ This is certainly an encouraging beginning step, but a more deliberative and expansive approach must be taken in assisting women in developing networking skills if there is to be an appreciable decline in the attrition trend.

Professional networks are essential to the success of every lawyer because they provide access to mentors and serve as a conduit to business development.²¹⁵ Women can learn techniques to improve their networking capabilities. First, women should begin by participating in organizations and activities in which they feel a level of comfort and enjoyment.²¹⁶ Next, a woman should move to “[t]ranslate [p]ersonal [r]elationships into [p]rofessional [d]ealings” by presenting herself as an attorney in any of her nonprofessional activities, such as children’s school activities, sports teams, and religious organizations.²¹⁷ Women should also learn business development skills, including an ability to plan their own networking events, which will help to bridge further the gender gap in the workplace.²¹⁸ With these skills and by “doing excellent work, giving speeches, writing articles, and establishing relationships with more-junior lawyers,” women can then “[g]ain [a]ccess to [d]ecision-[m]akers,” “[b]ecome the [p]oint [p]erson,” and develop a reputation both within the law firm and in the local professional community.²¹⁹ The relationship with junior lawyers “who will rise up through the ranks” in the future also assists women through the transition from simply an attorney to a decision maker to whom the junior lawyers may defer to for advice or as their point person.²²⁰ Another suggestion to improve a woman’s networking capabilities is for her to “[d]o [e]xcellent [w]ork, [t]ake [c]redit, and [n]etwork [i]nternally” to develop relationships with

214. WORKING MOTHER & FLEX-TIME LAWYERS, 2008 BEST LAW FIRMS FOR WOMEN: NATIONAL SURVEY 3 (Jennifer Owens & Suzanne Riss eds., 2008), <http://flex.timelawyers.com/best/art3.pdf>.

215. LINDA BRAY CHANOW, NATIONAL ASS’N OF WOMEN LAWYERS, ACTIONS FOR ADVANCING WOMEN INTO LAW FIRM LEADERSHIP 13 (2008).

216. Henry, *supra* note 203, at 17. Women should also “[m]aximize [m]arketing in the [a]ctivities in [w]hich [they] are [a]lready [e]ngaged,” such as professional organizations and bar associations, by participating in regular events and meetings to make connections with those “who may refer business to [them].” *Id.* at 18.

217. *Id.* at 17.

218. Goldstein, *supra* note 95, at 50. If women can increase their business development skills in an effort to improve the success of the law firm as well as themselves, it will help to minimize the gender gap.

219. Henry, *supra* note 203, at 18.

220. *Id.*

other associates and partners, expand the firm's business, and build internal relationships with "as many colleagues as possible to gain broad support and to benefit directly from varied work styles."²²¹

It is, however, unrealistic to expect the new fledgling female attorney to assume the added task of learning good networking skills at a time when she is already finding herself overwhelmed. Networking, like rainmaking, can be taught to women, and such training is necessary at a stage much earlier than the first year of law practice. Law schools must recognize the importance of not only teaching networking and rainmaking in a more formalized manner but also the value of mentoring relationships.

Law firms have looked to males as the traditional rainmakers for a variety of reasons.²²² Rainmakers are an essential element to ensure success within a law firm.²²³ Studies suggest that one of the reasons behind gender inequality and high female attrition rates is that "[w]omen have a harder time getting the rainmaking positions and that impacts their ability to move up in law firms."²²⁴ Although "[w]omen want to head client teams, be the first chair lawyer, be the rainmaker, manage the practice group and manage the firm,"²²⁵ these opportunities are not readily available and are the impetus for many women's leaving private practice.²²⁶ Nearly 50% of large law firms have no women among their top ten rainmakers, and another 32% have only one woman in the top ten rainmakers.²²⁷ Nearly 75% of all firms have no women in the top five

221. *Id.* at 19–20.

222. Nancy J. Reichman & Joyce S. Sterling, *Recasting the Brass Ring: Deconstructing and Reconstructing Workplace Opportunities for Women Lawyers*, 29 CAP. U. L. REV. 923, 943 n.66 (2002); see, e.g., Jim Hassett, *What's Different, What Isn't?*, OF COUNS., Aug. 2008, at 14. However, "[t]he influence of female decision-makers is continuing to grow in corporate America, and so too is the influence of female rainmakers at law firms." *Id.* at 16; see also Bruce A. Green, *Professional Challenges in Large Firm Practices*, 33 FORDHAM URB. L.J. 7, 15 (2005) (stating "senior lawyers do not necessarily see the professional development of young lawyers as an important role for themselves, nor do they have an incentive to engage in it") (footnotes omitted); Brad D. Brian, *Opening Statement: Raise the Bar*, LITIG., Summer 2005, at 1, 2, 6 (suggesting ideas for how to make the practice of law more satisfying).

223. A rainmaker is one "who brings in new business . . . [and] a person whose influence can initiate progress or ensure success." MERRIAM-WEBSTER ONLINE DICTIONARY (2009), <http://www.merriam-webster.com/dictionary/rainmaking> (last visited Apr. 5, 2010).

224. Tracy Carbasho, *ACBA to Launch Institute for Gender Equality*, LAW. J., June 2008, at 1, 11 (quoting ACBA President Ken Gormley).

225. Karen Neal & Cynthia Sellers, *The Advancement of Women in the Private Practice of Law and Why Guys Should Care*, 45 TENN. B.J. 20, 21 (2009).

226. *Id.*

227. SCHARF ET AL., *supra* note 55, at 9. "The firms without any women rainmakers in their top ten have a much greater pay differential between male and female partners." *Id.* at 10.

rainmakers.²²⁸ The notion is that rainmakers must have self-confidence, bordering on arrogance, which “seems to come easier to men than to women.”²²⁹ One study based on surveying 426 female attorneys identified “four guiding principles of success” for female rainmakers:

1. Have the right attitude: “a certain optimism, an element of persistence, and an ability to be resilient.”
2. Take the lead: Women lawyers with leadership positions, both inside and outside the firm, generated more new business.
3. Invest time wisely: “Every hour dedicated weekly to developing existing clients and attracting new business yields female attorneys nearly \$30,000 in additional origination revenue”
4. Know the power of client service: Women lawyers who agreed with the statement “client service has no impact” on new business reported far lower annual originations—less than \$600,000—than those who believed that “client service differentiates”—more than \$800,000.²³⁰

The best rainmakers do not hesitate to ask for what they want, whether it is work assignments, participation in client meetings, or more favorable compensation.²³¹ Effective rainmaking involves becoming active in organizations, particularly nonlegal ones, and most especially, taking a leadership role in these organizations to make contacts and increase visibility.²³²

This can be particularly problematic for the female attorney who already has too little time. Women must think carefully and select the best route to capitalize their involvement and select organizations that have the most potential for helping them meet their goals. If the organization is also one that will provide her with personal satisfaction, the woman attorney can also use this to achieve balance and reduce stress.²³³ Women who have already thought about how to forge a path as a rainmaker and have developed some basic skills in this area while they were law students are much more likely to be as successful

228. *Id.* at 9.

229. Hassett, *supra* note 222, at 16.

230. *Id.* at 15.

231. Jody L. Newman, *Bringing Home the Bacon While Minding the Farm: How Managing Your Firm Can Help You Make Rain*, L. PRAC., Jan.–Feb. 2009, at 52, 52.

232. Susan Saltonstall Duncan, *Rainmaking: Building Your Reputation, Part 3: Maximizing Your Involvement in Organizations*, L. PRAC., Oct.–Nov. 2008, at 52, 52.

233. *See id.* at 53.

rainmakers as their male counterparts.²³⁴ Law schools have the means to offer all students training in this most necessary aspect of the actual practice of law. It is unfortunate that law schools have refused to see this, and as a result, its female graduates are placed at a great disadvantage.

As law firms operate more like other businesses with increased demands regarding profitability, partners have reduced the amount of time they spend mentoring and training associates.²³⁵ This becomes a problem because “[w]omen who are not mentored are in fact less likely to advance.”²³⁶ Not only is advancement a concern, but the lack of committed mentors leads to associates not bonding with partners or not feeling committed to their firm, thereby “increas[ing] the likelihood of associate attrition.”²³⁷ Furthermore, as fewer women are mentored, there become even fewer women advancing into suitable roles to become mentors to future generations of rising women attorneys, creating an increasing and compounding problem.²³⁸ Mentoring is a time-consuming endeavor,²³⁹ and to further exacerbate an already dwindling pool of available senior women mentors, there is a perception among some older women attorneys that young “[f]emale lawyers entering the profession often don’t want to make the same personal sacrifices as their predecessors, and they question whether such sacrifices are even necessary to succeed.”²⁴⁰ This generational gap mindset makes it difficult for some senior women at law firms to mentor these new, young female lawyers.²⁴¹ Therefore, to set up a successful mentoring program, this information and the changing demographics of the new female attorneys should be taken into consideration to provide a mentoring match that would be beneficial to

234. In fact, “the best rainmakers are people who can and do develop and nurture relationships,” tasks at which many women are innately good. Christine Baker, *Succeeding as a Partner: What’s a Girl To Do?*, L. PRAC., July–Aug. 2007, at 64, 64. The only problem is the hesitancy many women feel within the firm. *Id.* If these women could apply these skills to developing business, there is no reason why women could not be their firm’s rainmaker. *Id.*

235. Goldstein, *supra* note 95, at 49. This increased competitiveness leads attorneys to “protect their turf, billings and clients,” rather than work harmoniously for the overall benefit of the client and the firm. Fortney, *supra* note 58, at 281.

236. RHODE, *supra* note 19, at 16.

237. Fortney, *supra* note 58, at 283.

238. Ida O. Abbott, *Women in Law Firms: Redefining Success*, L. PRAC., Apr. 2004, at 35, 37, 39.

239. Jeffrey C. Connor, *It’s About the Feedback*, L. PRAC. TODAY, Apr. 2009, <http://www.abanet.org/lpm/lpt/articles/pma04091.shtml> (positing that feedback is the major element in development and is often overlooked in a busy environment).

240. Stephanie Francis Ward, *What Women Lawyers Really Think of Each Other*, A.B.A. J., Feb. 2008, at 46, 48.

241. *Id.*

both the mentee and the mentor.²⁴² Although it is important for women to be each other's strongest advocates, it is also important to understand and recognize that younger women can use different strategies and build their careers differently from previous generations.²⁴³

Mentoring circles provide a viable alternative solution to the issues created when older male attorneys mentor younger female attorneys. Mentoring circles involve groups of attorneys and may take various forms: a single mentor linked with multiple mentees, multiple mentors linked with multiple mentees, or a group of peer mentors.²⁴⁴ Mentoring circles provide opportunities for cross-gender mentoring in settings in which male mentors are less likely to be concerned their actions might be perceived as improper and where female mentees are more likely to establish high levels of trust.²⁴⁵ Whether mentoring circles are used or mentoring occurs in other forms, it is essential that it does take place in order to decrease female attrition in law firms.²⁴⁶ In general, it is readily apparent that networking, rainmaking, and mentoring are all professional development tools that are essential to increase the stock, value, and retention of women in the legal profession.

242. *Id.* Also of particular note regarding the mentoring relationship is that “[n]ow that women have a lot more models to choose from, they are becoming more selective as to which women they identify with.” *Id.* Knowing this information, or creating a mutually beneficial mentor-mentee relationship, will help foster the important growth that currently is lacking.

243. *Id.*

244. CHANOW, *supra* note 215, at 11–12.

245. *Id.* Scharf also states:

What success I have had is in large part due to mentoring by senior male partners, who insisted that their work and mine meet the highest standards for legal work, pushed me to develop business even when I was afraid to, and “pounded the table” for me when it counted. Most of these men had justified reputations as “tough guys”—and I was hardly tough—but they took the time to teach me the skills necessary to succeed. I do not minimize the impact they had on my career.

Id. at 12; see also Robin J. Ely et al., *Rethinking Political Correctness*, HARV. BUS. REV., Sept. 2006, at 78, 79–80 (writing that minority group members suffer when the majority group does not speak candidly on account of political correctness); Rochelle Karr, *Communicating Across Generations*, L. PRAC., June 2006, at 18, 18 (finding that female associates do not receive the same tough, critical feedback that male associates receive).

246. See IDA O. ABBOTT & RITA M. BOAGS, *MENTORING ACROSS DIFFERENCES: A GUIDE TO CROSS-GENDER AND CROSS-RACE MENTORING* 8 (2003), <http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=666>; Susan G. Manch, *Mentoring Programs: The First Step in Keeping Associates with the Firm*, PRAC. LAW., Apr. 1999, at 15, 16–17, 20–21; Peter M. Newton, *Ending the Exodus*, AM. LAW., Jan. 2001, at 53, 53.

X. THE ROLE OF LAW SCHOOLS IN PREPARING STUDENTS AND LESSENING FUTURE ATTRITION

Anne Castle, a former part-time lawyer who was the first woman elected to serve as chair of her firm's management committee, stated: "One reason women don't advance to leadership positions as often as they should is this inability by some—men and women alike—to recognize and accept different, valid leadership styles. . . . And that's something that must be attended to."²⁴⁷ In the past, women have learned in an ad hoc manner from a variety of sources, such as bar associations, licensing bodies, sporadic law school curricular offerings, occasional Continuing Legal Education programs, and various organizations primarily serving nonlawyers, such as the Association of Legal Administrators, the Legal Marketing Association, and the Institute of Management and Administration.²⁴⁸ It is imperative that law schools be at the forefront of this movement to change the ad hoc approach of training networking, rainmaking, and mentoring into an approach that is deliberately inclusive. It is incumbent upon law schools to "change the perception that work and family cannot coexist. Until graduates leave prepared to advocate for and take advantage of family-friendly workplace policies, work and family will continue to be either-or propositions for many professionals."²⁴⁹ The goal of legal education is not merely analytical knowledge but rather a holistic goal to train students to become professionals "who embody the profession's highest levels of skill in the service of its defining purpose."²⁵⁰ Indeed, the *Carnegie Report on Legal Education* describes three apprenticeships in an attorney's career development: the intellectual or cognitive apprenticeship, the expert practice apprenticeship, and the apprenticeship of identity and purpose.²⁵¹

One route for integrating all three of these apprenticeships into legal education would be for law schools to incorporate instruction on how to achieve the following outcomes listed in *Best Practices for Legal Education*:

247. Steven T. Taylor, *Leading With an Open Mind: Listening, Learning and Mediating*, L. PRAC., Oct.–Nov. 2008, at 39, 40.

248. Richard Potter, *Leadership Education: What's Needed and Why*, L. PRAC., Oct.–Nov. 2008, at 56, 56.

249. Robin Fretwell Wilson, *Keeping Women in Business (and Family)*, in *RETHINKING BUSINESS MANAGEMENT* 95, 95 (Samuel Gregg & James R. Stoner, Jr. eds., 2008).

250. Leslie Larkin Cooney, *Giving Millennials a Leg-Up: How To Avoid the "If I Knew Then What I Know Now" Syndrome*, 96 KY. L.J. 505, 518 n.76 (2008).

251. See WILLIAM SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 27–28 (2007).

7. Demonstrate an appreciation of the commercial environment of legal practice, including the market for legal services.

....

9. Use risk management skills.

10. Recognize personal and professional strengths and weaknesses, to identify the limits of personal knowledge and skill and to develop strategies that will enhance their personal performance.

11. Manage their personal workload and manage efficiently and concurrently a number of client matters.

12. Work as part of a team.²⁵²

Although there are a number of law and business hybrid programs,²⁵³ law schools do not typically incorporate business concepts into their usual school curriculum. When one considers the above-listed outcomes and compares them to the skills development that could effectuate a reduction in attorney attrition, one logical solution is to expand to an interdisciplinary approach and offer more business, management, leadership, and marketing training of law students in conjunction with existing MBA programs. Law schools need not offer traditional stand-alone courses for credit on each of these subjects, but schools could incorporate a variety of the subjects under the umbrella of one course.

A report stemming from NAWL's National Leadership Summit urged training for women to become effective self-promoters. "Women succeed and exceed expectations on a regular basis. What most women do not do well is demand acknowledgement of that success."²⁵⁴ If all law

252. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 54 (2007) (citing THE LAW SOC'Y, SECOND CONSULTATION ON A NEW TRAINING FRAMEWORK FOR SOLICITORS § 4, ¶ 46 (2003)). *Best Practices* has adopted, with a few changes, the statement of outcomes being pursued in England and Wales. *Id.* at 45.

253. Potter, *supra* note 248, at 54. Few institutions offer areas devoted to law practice management as a separate field of study. *Id.* Potter lists the University of Denver, Nottingham Trent University, and George Washington University as examples. *Id.*

254. CHANOW, *supra* note 215, at 27. Because women are more likely than men to be faulted for self-promotion, women benefit greatly from guidance on how to best represent their own self-interests within law firm expectations. "Women are reluctant to negotiate their compensation and credit, which leaves them at the whim of whomever is giving out credit." *Id.* Arianna Huffington, cofounder of the Huffington Post, stated:

Women still have an uneasy relationship with power and the traits necessary to be a leader. There is this internalized fear that if we are really powerful, we are going to be considered ruthless or pushy or strident—all those epithets that strike right at our femininity. We are still working at trying to overcome the fear that power and womanliness are mutually exclusive.

students had formalized access to training on some or all of these topics, then they would be better prepared to face the demands of entering into law firm practice and less likely to leave the profession. Alternatively, law schools should at the very least facilitate mentor-mentee relationships, particularly for female students.²⁵⁵ All students could benefit from learning how to facilitate and foster this relationship and could be taught how to maximize its benefits. Teaching time management skills will aid students' future abilities to lead balanced lives.²⁵⁶ Law schools can encourage students to develop effective networking skills by thinking about ways they can help classmates meet career goals, and students should be taught to understand that they create future goodwill by being generous now in their relationships and contacts.²⁵⁷

One law professor has even proposed an entire course focusing each student's attention inward and requiring each student to develop a career plan for the next forty years of her life in the law.²⁵⁸ The course is directed to all students and seeks to raise awareness of ways to utilize the various techniques to enhance professional development techniques, which will serve them well throughout the rest of their lives.²⁵⁹ Students begin by guided self-assessment, reflect upon life goals and values, and consider the ramifications of their plans for practicing law.²⁶⁰ The course next examines various modes of legal practice and requires students to assess areas of practice along a variety of vectors and

Arianna Huffington, *My Journey to the Top*, NEWSWEEK, Oct. 15, 2007, at 49, 49. For further expansion on this issue, see Hull & Nelson, *supra* note 18, at 690. Hull & Nelson note that litigators rely on intimidation and strategic friendliness as a means of accomplishing professional goals. *Id.* Because these characteristics tend to be more masculine, “[f]emale litigators must contend with a situation in which the emotional labor associated with their occupational status is at odds with their gender identity.” *Id.* at 691.

255. For a first-person account of the benefits to both mentor and mentee in such a relationship, see Liz Grana & Dudley McCarter, *Crafting a Relationship: A Mentor and Mentee's Perspective*, L. PRAC. TODAY, Apr. 2009, <http://www.abanet.org/lpm/lpt/articles/ft04094.shtml>.

256. The ultimate intent of time management is not to squeeze more into a day but to be more productive and set better goals. Teaching law students how to make choices, delegate, and communicate would not only make them more effective lawyers but would also be likely to reduce the stress levels in their daily lives. See Kathleen Brady, *Achieving Life/Work Balance Through Effective Time Management*, L. PRAC. TODAY, Aug. 2009, <http://www.abanet.org/lpm/lpt/articles/ft08092.shtml>.

257. Lauren Stiller Rikleen, *Millennials: Tips for Building a Foundation for Success*, L. PRAC., Jan.–Feb. 2009, at 55, 55.

258. Jennifer Gerarda Brown, *Reform at the Micro Level: Planning for a Life in the Law*, 43 HARV. C.R.-C.L. L. REV. 645, 645 (2008).

259. *Id.* at 646.

260. *Id.*

consider whether their skills and preferences are consistent with the requirements of the field they wish to pursue.²⁶¹ The course places special emphasis on mentoring by requiring students not only to synthesize all of the information they have accumulated about the practice of law and themselves, but it also requires them to present and discuss their own professional development plans.²⁶² Although the goal of the course is to anchor young lawyers with the tools that will sustain them throughout their careers, it will also assist them in flourishing within law firms instead of departing from them.²⁶³

XI. CONCLUSION

The exodus of women leaving the practice of law has reached a critical state—enough to create brain drain, a leaky pipeline, and societal ramifications.

Your first thought may be that we, as women, have done well. . . . But have we as women lawyers truly made it? Have we achieved true equality in the workplace? I'd say no. Work-life balance issues continue to dominate, overall job satisfaction surveys show that lawyer burnout runs highest for women, and salary inequality still exists.²⁶⁴

Although the most cited reason for women leaving law practice has been the desire for greater work-life balance, the pressures of the billable hour remain a large stumbling block for correcting this imbalance for attorneys of both genders. The part-time practice of law creates a different set of problems, including stigmatization, and fails to keep women lawyers in leadership positions in any meaningful proportionate numbers. The growing movement to a balanced hours approach in the practice of law helps to alleviate the stressor of role overload and rising mental health problems as do the nonlinear career paths, which are more likely to appeal to the Millennials currently entering the law firm workforce. Both the profession at-large and law schools need to come together to help find a supportive environment for all attorneys. The best place to initiate change, however, is where legal education starts. Law schools

261. *Id.* at 647.

262. *Id.* at 647–48.

263. *Id.* at 650.

264. Susan A. Berson, *Making Herstory: U.S. Circuit Judge Encourages the Next Steps Toward Equality*, A.B.A. J., Mar. 2010, at 28, 29 (quoting Judge Deanell Reece Tacha, U.S. Tenth Circuit Court of Appeals).

can and must arm all of their students with the skills to assist them not only to *enter* into the practice of law but with the tools to *remain* happy and balanced within the practice of law.