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## **On Balance: Leading by Leaving**

**Paula Schaefer**

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# ON BALANCE: LEADING BY LEAVING

Paula Schaefer<sup>1</sup>

## I. INTRODUCTION

Even though women make up half of law school classes in the U.S., hold half of elite judicial clerkships, and accept almost half of the jobs in large U.S. law firms, only a small number of women make partner or serve in leadership roles in those firms.<sup>2</sup> Much has been written about the things that stand in the way of gender equality in elite law firms.<sup>3</sup> Yet misconceptions persist about why the time demands of “big law” have a disproportionate impact on women.

This Article points to evidence that is contrary to those misconceptions and argues that the women – and men – who leave large law firms in search of balance are exhibiting leadership. Contrary to Sheryl Sandberg’s advice that they should “lean in” if they hope to lead,<sup>4</sup> these former big law attorneys are leading by leaving.

Following this Introduction, Part II looks at the numbers of women in the pipeline from law school to elite law firms, and how the numbers drop off precipitously before women achieve partnership and take on leadership positions. Next, Part III considers and refutes two common misconceptions about why women have not succeeded in big law: that women lack ambition and that women cannot shoulder the dual demands of practicing law and being a primary caregiver. The reality is that these women are ambitious and that both women and men leave elite firms for similar reasons. They are often seeking better balance in their professional and personal lives. The topic of balance is the focus of Part IV, which makes the argument that lawyers who are leaving large law firms in search of work-life balance are exhibiting leadership.

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<sup>1</sup> Associate Professor of Law, University of Tennessee College of Law. Thanks to Brady Cody for providing excellent research and to Doug Blaze, Brad Morgan, and Joy Radice for the helpful suggestions that they provided.

<sup>2</sup> See *infra* notes 5-16 and 31-34 and accompanying text.

<sup>3</sup> See, e.g., *infra* note 26.

<sup>4</sup> SHERYL SANDBERG, LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD, 25 (Alfred P. Knopf 2013) (asserting that women should “lean way in” to their careers; “Find the right career for you and go all the way to the top.”).

Turning to the topic of this symposium, Part V concludes with some suggestions about how law school leadership education could address issues of work-life balance and gender disparities in the profession. Rather than framing these as women's issues, this Part suggests the benefits of presenting these as issues that men and women should consider as they make a plan for their professional and personal lives.

## II. WOMEN IN LARGE LAW FIRMS

The barriers that once prevented women from entering the legal profession are gone.<sup>5</sup> For the past twenty-five years, women have represented approximately half of the entering law school classes in U.S. law schools.<sup>6</sup> These numbers have translated into close to equal numbers of women and men joining the largest law firms in the United States.<sup>7</sup>

Despite this pipeline of women entering the country's elite law firms, women do not stay.<sup>8</sup> For the past decade,<sup>9</sup> the number of women in equity partnership positions in Am Law 200 law firms<sup>10</sup> has shifted upward only slightly:

<sup>5</sup> Deborah L. Rhode, *Women and the Path to Leadership*, 2012 MICH. ST. L. REV. 1439, 1440-47 (2012) (describing the obstacles to women entering law school and practice from the late 1800's through the 1970's); Fiona Kay & Elizabeth Gorman, *Women in the Legal Profession*, 4 ANN. REV. L. & SOC. SCI. 299, 300-301 (2008) (same).

<sup>6</sup> Kay & Gorman, *supra* note 5, at 1946, n. 13. [better cite? More accurate number of years?].

<sup>7</sup> *Report of the Ninth Annual National Survey on Retention and Promotion of Women in Law Firms*, National Association of Women Lawyers, 2015, at 2 (Women made up 45% of associate positions in the 2006 NAWL survey and 44% in 2015) [hereinafter "9<sup>th</sup> Annual NAWL Survey"]. The stated goal of the annual NAWL survey is "to address the gap in objective statistics regarding the advancement of women lawyers into the highest levels of private practice." *Id.* at 4.

<sup>8</sup> Eli Wald, *Glass Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes, and the Future of Women Lawyers at Large Law Firms*, 78 FORDHAM L. REV. 2245, 2252 (2010) (explaining that though female lawyers who entered the profession in the 1970s and 1980s were able to gain entry into elite law firms, the next generation who entered in the 1990s and 2000s "consistently fail[ed] to achieve equal representation at the partnership level."); Cynthia Fuchs Epstein, *et al.*, *Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession*, 64 FORDHAM L. REV. 291, 291 (1995) (noting the small percentage of women partners in the early 1990's despite roughly equal hiring of women and men).

<sup>9</sup> The past decade is a significant time frame because in 2007, the National Association of Women Lawyers issued a challenge to large law firms to double the number of female equity partners within 10 years. See *Report of the First Annual NAWL National Survey on Retention and Promotion of Women in Law Firms*, National Association of Women Lawyers, 2007. The goal seemed achievable because women had been half of law school graduating classes and half of new associate classes since 1991. See Julie Triedman, *A Few Good Women*, THE AMERICAN LAWYER, 1 (May 28, 2015).

<sup>10</sup> An "Am Law 200 law firm" is a firm ranked by the American Lawyer as the top 200 U.S. law firms by revenue. In 2015, the firm sizes of these firms ranged from

from 16 percent in 2006 to 18 percent in 2015.<sup>11</sup> The impact of this slow pace of progress is perhaps best understood in these terms: “At this rate, women equity partners will reach 30 percent by 2081.”<sup>12</sup>

The same is true for non-equity partnerships, with women representing 26 percent of non-equity partners in 2006 and only 28 percent in 2015.<sup>13</sup> In the NAWL Ninth Annual Survey, large law firms were asked to report the number of associates elevated to non-equity partnership by graduation class year. For classes that graduated in 2004 and later, 62 percent of non-equity partners were men and 38 percent were women.<sup>14</sup>

It should be unsurprising that women are not well represented in firm governance of the largest firms in the U.S. The typical firm responding to the NAWL Ninth Annual Survey reported eight men and only two women on their governance committee.<sup>15</sup> For firms with a single managing partner, women held only 24 percent of those positions.<sup>16</sup>

### III. MISCONCEPTIONS ABOUT HOW TIME DEMANDS CREATE A GENDER DISPARITY IN LARGE LAW FIRMS

Attorneys in large law firms are expected to have very little life and very few obligations outside of the firm.<sup>17</sup> Time – particularly, the amount of time billed – is everything in the big law firm. As Ann-Marie Slaughter put it, “Nothing captures the belief that more time equals more value better than the cult of billable hours afflicting large law firms across the country.”<sup>18</sup> More specifically, law firms value “continuous and full time work” and expect lawyers

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150 to 4,000 lawyers and firm revenues ranged from \$85 million to \$2 billion. The Am Law 200, *The American Lawyer*, available at <http://www.americanlawyer.com/law-firm-profiles>. The NAWL National Survey is sent to Am Law 200 firms; in 2015, only 73 of these firms responded to the survey. 9<sup>th</sup> Annual NAWL Survey, *supra* note 7, at 13 (appendix on survey methodology).

<sup>11</sup> *Id.*

<sup>12</sup> Friedman, *supra* note 9, at 1.

<sup>13</sup> 9<sup>th</sup> Annual NAWL Survey, *supra* note 7, at 13. The number of women holding the position “of counsel” has moved from 28 percent in 2006 to 34 percent in 2015. *Id.*

<sup>14</sup> *Id.* at 6.

<sup>15</sup> *Id.* at 10 (further noting that 35% of respondents had 0-1 women, 41% of respondents had 2-3 women, and 24% of respondents had 4 or more women).

<sup>16</sup> *Id.*

<sup>17</sup> Richard Collier, *Naming Men as Men in Corporate Legal Practice: Gender and the Idea of “Virtually 24/7 Commitment” in Law*, 83 *FORDHAM L. REV.* 2387, 2387 (2015) (quoting Lord Neuberger as stating, “The truth is that the top law firms require a virtually 24/7 commitment from their employees and partners . . . Solicitors with family responsibilities almost inevitably work fewer hours, and therefore do not carry the same heft as those sad people who have no life but their work.”).

<sup>18</sup> Anne-Marie Slaughter, *Why Women Still Can’t Have It All*, *THE ATLANTIC*, at 21 (July / August 2012) She concludes the thought with “and providing exactly the wrong incentives for employees who hope to integrate work and family.” *Id.*

to be available on demand, 24 hours a day and 7 days a week.<sup>19</sup> Eli Wald has described the ideology of the modern<sup>20</sup> elite law firm as “hypercompetitive,” characterized by well-credentialed lawyers working around the clock in pursuit of their clients’ interests.<sup>21</sup> The ideal candidate for big law is someone who can meet the firm’s “merit credentials” and who is “willing to sacrifice personal lives, indeed to allow their professional identity to overtake and consume their personal identity.”<sup>22</sup>

In a large U.S. law firm, the minimum (or target) billable hours for an associate is in the vicinity 2,000 per year.<sup>23</sup> If an attorney works five days a week for fifty weeks of the year, the math works out to a minimum requirement of billing eight hours a day. Anyone who has billed time knows that it takes far more than eight hours in the office to bill eight hours of time. A typical attorney will work ten to twelve hours a day – including many weekends – to bill the minimum of 2,000 hours a year.<sup>24</sup> Attractive flexible and part-time options still have not been made available to attorneys who practice in most of these firms.<sup>25</sup>

These time demands play a role in the fact that most women leave large law firms before they achieve partnership and leadership positions.<sup>26</sup> But why

<sup>19</sup> Kay & Gorman, *supra* note 5, at 308, citing Reichman & Sterling, *Recasting the Brass Ring: Deconstructing and Reconstructing Workplace Opportunities for Women Lawyers*, CAP. UNIV. L. REV. 29, 923-7 (2002).

<sup>20</sup> Wald, *supra* note 8, at 2271 (describing the mid-1980s to the present as hyper-competitive ideology time period).

<sup>21</sup> *Id.* at 2271-72 (“The ideology turned increasingly long hours and around-the-clock service mentality into elements proving the commitment of lawyers to their clients, and reestablished the claim of large law firms to elite status, ironically because it defined elite status and excellence in terms of the absolute loyalty and commitment its clients demanded.”).

<sup>22</sup> *Id.* at 2272.

<sup>23</sup> See, e.g., *The Truth About the Billable Hour*, Yale Law School, available at <https://www.law.yale.edu/student-life/career-development/students/career-guides-advice/truth-about-billable-hour> (describing average, minimum, or target billable hours in the range of 1,700 to 2,300 hours, but advising that firms do not always provide this information outside of the firm).

<sup>24</sup> See, e.g., Amelia J. Uelmen, *The Evils of “Elasticity: Reflections on the Rhetoric of Professionalism and the Part-Time Paradox in Large Firm Practice*, 33 FORDHAM URB. L.J. 81, 81-82 (2005) (describing the daily ten or eleven hour workdays necessary to bill 2,000 hours a year and complete non-billable but required tasks). See also, *The Truth About the Billable Hour*, Yale Law School, available at <https://www.law.yale.edu/student-life/career-development/students/career-guides-advice/truth-about-billable-hour> (calculating that it will likely take around 3,058 hours in the office to bill around 2,200 hours a year and around 2,434 hours in the office to bill around 1,800 hours).

<sup>25</sup> See *infra* notes 36-38 and accompanying text.

<sup>26</sup> Wald, *supra* note 8, at 2255 (noting that the numbers clearly reveal that women leave large firms at a higher rate than men and that men are more likely to achieve partnership than women). Undoubtedly, the interplay of a number of factors – some unrelated to big law’s time demands – explain the gender disparity in big law firm partnership, including bias and stereotypes, lack of mentorship and sponsorship for women, and sexual harassment. See generally, *id.* at 2256-57 (listing these factors and also “workplace structures” and law firms’ professional ideology as barriers to

do the time demands impact women at a higher rate than men? This Part addresses two common misconceptions of the issue and explains why these misconceptions are a barrier to solving the problem.

#### A. Lack of Ambition

Facebook COO Sheryl Sandberg famously urged women to “lean in” to gain leadership roles in corporate America.<sup>27</sup> In her book by the same name, she describes an “ambition gap” between men and women that results in women choosing not to participate fully and lead in the workplace.<sup>28</sup> A recent study reveals that professionals widely share the belief that women value career less than men.<sup>29</sup> The conventional wisdom is that “a woman’s primary career obstacle is herself” through her choices to “forgo opportunities, projects, and jobs.”<sup>30</sup>

But there is reason to doubt that professional women who leave large U.S. law firms lack ambition.<sup>31</sup> Women who join large law firms are ambitious people. They have attended the best law schools, received the best grades, and participated in key extracurricular activities (like law review).<sup>32</sup> In U.S. law schools, women hold just over half of leadership positions on law reviews and just under half of editor-in-chief positions on law reviews.<sup>33</sup> Further, many women who join large law firms held prestigious judicial clerkships after grad-

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women in elite law firms). Triedman, *supra* note 9, at 2 (describing law firm efforts to address unconscious gender bias in promotions and compensation); Joanna Barsh & Lareina Yee, *Unlocking the full potential of women in the U.S. economy*, McKinsey & Company Special Report for The Wall Street Journal Executive Task Force for Women in the Economy 2011, at 4 (reasons women leave include lack of role models and sponsors, exclusion from informal networks, and entrenched beliefs about women). This Article does not attempt to quantify whether time-related issues or other factors is a more significant factor in the underrepresentation of women in law firm leadership.

<sup>27</sup> Sandberg, *supra* note 4, at 25.

<sup>28</sup> *Id.* at 15-16.

<sup>29</sup> Robin J. Ely, *et al.*, *Rethink What You “Know” About High-Achieving Women*, HARVARD BUSINESS REVIEW, 6 (Dec. 2014) (“Despite the fact that men and women actually have pretty similar career priorities, the belief that women value career less is widespread.”). *See also* Wald, *supra* note 8, at 2254 (asserting that a prevalent perspective on gender disparities in elite law firms is not a problem because the numbers are explained by women’s choice to opt out).

<sup>30</sup> *Id.* at 15.

<sup>31</sup> Slaughter, *Can’t Have it All*, *supra* note 18, at 15 (“[M]undane issues – the need to travel constantly to succeed, the conflicts between school schedules and work schedules, the insistence that work be done in the office – cannot be solved by exhortations to close the ambition gap. . . . America’s social and business policies, rather than women’s level of ambition, [explains] the dearth of women at the top.”).

<sup>32</sup> Wald, *supra* note 8, at 2272 (describing large firm hiring practices in the modern era as recruiting from elite law schools and insisting on “top educational credentials and extracurricular activities.”).

<sup>33</sup> *A Current Glance at Women in the Law*, ABA Commission on Women in the Profession, July 2014, at 4 (citing statistics for the timer period 2012-2013).

uation.<sup>34</sup>

During the time they practice in large law firms, women continue to demonstrate their ambition. For example, men and women have similar levels of billing in these firms.<sup>35</sup>

Further, if a lack of ambition were the problem, then the standard “off track” part-time and flexible time programs would be a solution. But that has not been the case.<sup>36</sup> Many lawyers perceive that the work they are given is less interesting and does not allow them to use the full range of skills they have developed as a lawyer.<sup>37</sup> Beyond that, in many firms there is a stigma associated with these options<sup>38</sup> and no opportunity for advancement.<sup>39</sup> This can be particularly frustrating for a woman who has been an A student and a successful lawyer. It should not be surprising that many women would rather leave large law firms than work in these second-class positions.

#### B. Motherhood and the Primary Caregiver Burden

Another popular conception of the reason for the male-female imbalance in big firm partnership and leadership is that it is a consequence of motherhood.<sup>40</sup> When female professionals become mothers, typically they are the primary

<sup>34</sup> Women hold just over half of judicial clerkships at all court levels *Id.* at 5 (noting that for the Class of 2009, 51% of all clerkships were held by women, including 45.6% of federal clerkships).

<sup>35</sup> 9<sup>th</sup> Annual NAWL Survey, *supra* note 7, at 9-10.

<sup>36</sup> Triedman, *supra* note 9, at 1 (noting that flextime and part-time options have not resulted in firms retaining women with children).

<sup>37</sup> Uelmen, *supra* note 24, at 82-83 (describing her hope to continue to hone her “craft” as a “sticky issues analyst” and continue to work on the cases enjoyed, but instead her part-time schedule immediately resulted in her being dropped from those cases and assigned to an enormous document review project). *See also* Ely, *supra* note 29, at 8 (Harvard Business School survey respondents explain similar problems with part-time options, including boring work).

<sup>38</sup> Rhode, *supra* note 5, at 1457-58 (explaining that attorneys who work part-time in law firms often experience that “their schedules aren’t respected, their hours creep up, the quality of their assignments goes down, their pay is not proportional, and they are stigmatized as ‘slackers.’”).

<sup>39</sup> Triedman, *supra* note 9, at 2 (describing the stigma of “mommy-track” and the preference to leave the firm); Fiona M. Kay, *et al.*, *Leaving Private Practice: How Organizational Context, Time Pressures, and Structural Inflexibilities Shape Departures from Private Law Practice*, 20 *IND. J. GLOBAL LEGAL STUD.* 1223, 1232 (2013) (lawyers do not take advantage of part-time options “for fear of damaging their career.”). *See also* Susan Saltsonstall Duncan, *Why Aren’t There More Women Leaders and Why Should Firms Care?*, InFocus Insights on Legal Practice Strategies & Innovations (Sept. 10, \_\_\_) (reasons part-time arrangements did not work in a group of high achieving women who were the subject of a study included feeling marginalized, being denied good assignments, and being paid part-time wages for “nearly full-time hours.”).

<sup>40</sup> Triedman, *supra* note 9, at 2 (noting that by the mid-1990’s, firms had to deal with the fact that they lost most of their female lawyers when they had children).



caregivers of the family and try to do it all.<sup>41</sup> They will not ask or expect a spouse to share equally in the parenting tasks (or if they do ask or expect, they soon will be disappointed).<sup>42</sup> As a result, the female lawyer will be overwhelmed working full-time as a lawyer, while also doing a majority of the parenting and housekeeping.<sup>43</sup> Eventually, something has to give and it is likely her career.<sup>44</sup> One big firm partner describes the issue as this, “We lose [women] to families. The issue is the roles we play as mothers and caregivers and how difficult that is in the work that we do.”<sup>45</sup> Some commentators advise women that instead of leaving their professional careers to deal with these time demands, they should expect more from their partners.<sup>46</sup>

But this description of the problem does not align with reality. All lawyers who become parents - men and women alike - face a dilemma. Even when a child is in daycare or school<sup>47</sup> for ten to twelve hours of the day, there are still another twelve to fourteen hours when the child needs to be cared for (i.e., driven to activities, fed, and talked to) by a parent. And the big firm lawyer can reliably play - at best - a supporting caregiving role.<sup>48</sup> In other words, the problem is not that the big firm attorney needs a life partner who is willing to kick in fifty-fifty to the parenting enterprise.<sup>49</sup> She or he needs a spouse willing to

<sup>41</sup> One Harvard Business School alumna explained the “deep-rooted attitude that a woman would be the primary caregiver, so it is ‘understood’ that her career may have to take a backseat for a while as similar male colleagues move ahead at a more rapid pace.”). Ely, *supra* note 29, at 6.

<sup>42</sup> See, e.g., Ely, *supra* note 29 at 13 (“[Female Harvard Business School graduates] were more likely to have egalitarian expectations (about division of child care responsibilities and career priority with spouses) - and to see their expectations dashed.”).

<sup>43</sup> Sandberg, *supra* note 4, at 14-15 (“Our partners did not share the housework and child rearing, so [my generation of women] found ourselves with two full-time jobs. The workplace did not evolve to give us the flexibility we needed to fulfill our responsibilities at home. We anticipated none of this. We were caught by surprise.”).

<sup>44</sup> *Id.* at 15 (describing that when women try to “do it all,” something has to give and usually it is their career).

<sup>45</sup> Triedman, *supra* note 9, at 3, citing Lynne Hermle, an Orrick employment litigation partner.

<sup>46</sup> Sandberg, *supra* note 4, 104-20; Ely, *supra* note 29, at 17.

<sup>47</sup> For a response to those who believe parenting will be easier and less demanding in the high school years, see Slaughter, *Can't Have it All*, *supra* note 18, at 20 (describing the teenage years as just as important for a parent to be available as a child's early years).

<sup>48</sup> See *supra* notes 17-24 and accompanying text (describing the time demands of big law firms).

<sup>49</sup> Sheryl Sandberg suggests that finding a partner willing to take an egalitarian approach to breadwinning and caregiving is the answer. Sandberg, *supra* note 4, Chapter 8, *Make Your Partner a Real Partner*, at 104-120. See also <http://leanin.org/together/>

contribute all (or at least the vast majority) of the parenting.<sup>50</sup>

This means that a large number of talented women and men in big law firms will leave the firm in order to participate more equally in raising their families. Put another way, the people leaving are not trying to be parenting superstars. They are just people who want or need to play more than a supporting role in parenting their children.<sup>51</sup> They are often people with spouses who also have careers that they do not want to leave.<sup>52</sup> (It should not be surprising that successful professionals often have spouses who are successful professionals). Many will take the steps necessary to participate about equally with a partner in parenting and breadwinning.<sup>53</sup> And it is incredibly hard to do this when one of those parents is a lawyer in big law.<sup>54</sup>

The attorneys most likely to remain at big law after having children are those who have spouses willing to forego a career to become a primary caregiver for the family (including the lawyer).<sup>55</sup> Statistically speaking, male attorneys are much more likely than female attorneys to have spouses who are willing to stay at home to play this role.<sup>56</sup> It follows that many more male than female parents will remain in partnership or partnership-track positions in large law firms.<sup>57</sup>

In summary, when big firm lawyers are confronted with division of parenting duties, some male lawyers will stay at big law, some male lawyers will leave, and most female lawyers will leave. That is reality. Significantly, it is a

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<sup>50</sup> Kay & Gorman, *supra* note 5, at 311 (noting research for the proposition that long work hours are more problematic for female attorneys who are less likely to have stay-at-home spouses).

<sup>51</sup> Cf. Slaughter, *Can't Have it All*, *supra* note 18, at 6 (explaining that she was able to meet the demands of career and family as a law professor but working the State Department where she was "working long hours on someone else's schedule," she could not balance professional and parenting demands even with a spouse who did most of the parenting during Monday to Friday).

<sup>52</sup> Rhode, *supra* note 5, at 1458 (reporting results of an MIT study finding that one-third of male lawyers had spouses equally or more committed to their careers and that over two-thirds of female lawyers had partners who were equally or more committed to their careers).

<sup>53</sup> Barsh & Yee, *supra* note 26, at 6 (reporting that fifty percent of fathers and fifty-five percent of women without children in a McKinsey survey reported that they would not take a job that reduces work/life balance).

<sup>54</sup> Slaughter, *Can't Have it All*, *supra* note 18, at 9 (describing a conversation with a woman in a large New York law firm who looked for role models who have achieved work-life balance and reported, "I can't find any.>").

<sup>55</sup> Of course, another option is to have live-in help, such as a nanny. *See infra* note 60 at accompanying text.

<sup>56</sup> Judith G. McMullen, *Spousal Support in the 21st Century*, 29 WIS. J. L. GENDER & SOC. 1, 14 (2014).

<sup>57</sup> Nanette Fondas, *Couples Want to Lean In Together, But They Need Employers to Change Too*, PACIFIC STANDARD (Mar. 17, 2015) (even though a majority of men and women in a survey say they would like to share breadwinning and caregiving equally, "long hours and overwork norms" continue to cause parents to choose "sex-stereotyped jobs and family arrangements that are far from equal.>").

reality driven by the lawyers' partners' (and their careers) as much as by the lawyers themselves.<sup>58</sup> When Sheryl Sandberg and others tell women that they need "a real partner," they miss the point.<sup>59</sup> Women do not just need a 50/50 parenting partner in order to stay in (or "lean in" to) big law. They would need a stay-at-home spouse or a live-in nanny who will do most of the caregiving.<sup>60</sup> A stay-at-home spouse is not a feasible option for most professional women with children or for the many men whose partners value their own careers.<sup>61</sup> For a number of reasons, full-time help also is not a palatable option for most of these parents.<sup>62</sup>

This discussion is incomplete if we do not address the other reasons that lawyers may choose to leave the time demands of big law. Beyond parenting, many high-performing people leave large firms (and other sacrifice-everything-for-work professions) to have time to do things other than work.<sup>63</sup> They want to have a life outside of work *and* have meaningful work.<sup>64</sup> All of these issues of work-life balance are addressed in the following Part.

<sup>58</sup> See, e.g., Ely, *supra* note 29, at 14 (describing different expectations about career priority and childcare duties for male and female Harvard Business School millennials – and suggesting that there is a disconnect in expectations of men and women – but failing to acknowledge that we cannot determine whether expectations are realistic without knowing more about the survey participants' partners).

<sup>59</sup> See, e.g., Ely, *supra* note 29, at 17 (“[O]ur survey results make us think that Sheryl Sandberg’s other slogan – “make your partner a real partner” – is . . . perhaps more apt for young, achievement-oriented women who aspire to have meaningful, fully valued careers.”).

<sup>60</sup> Slaughter, *Can’t Have it All*, *supra* note 18, at 9 (sharing an anecdote that from a woman who said that all of the “top professional women she knew . . . relied on round-the-clock nannies.”); Paul Sullivan, *Work-Life Balance Poses Challenges Regardless of Wealth*, THE NEW YORK TIMES (Oct. 9, 2015) (dual high-pressure career family describes the difficulty of juggling and their reliance upon a nanny who comes every day); Sandberg, *supra* note 4, at 111 (acknowledging that “exceptional child care” is essential to her dual-career family).

<sup>61</sup> See *supra* note 52.

<sup>62</sup> Susan B. Share, *Mediating My Life: Confessions of a 24/7 Law Mom*, in IT’S HARDER IN HEELS: ESSAYS BY WOMEN LAWYERS ACHIEVING WORK-LIFE BALANCE, 100 (Vandeplas Publishing 2007) (describing the reasons she and her spouse (also a lawyer) have decided not to hire a nanny).

<sup>63</sup> Uelmen, *supra* note 24, at 82 (describing her motivation to seek a part-time option in a large law firm so that could “clean the house, cook dinner, attend church, read non-law books, work in the yard, and keep up with friends and community activities outside of the law firm” and also continue to have an interesting law practice); Kate Bolick, *Single People Deserve Work-Life Balance, Too*, THE ATLANTIC, 2 (June 23, 2012) (discussing the choice by a growing number of unmarried and childless people who are leaving careers to achieve better work-life balance which might include things like dating, exercises, volunteering, and caring for family);

<sup>64</sup> Brigid Schulte, *Millennials want a work-life balance. Their bosses just don’t get why*, THE WASHINGTON POST (May 5, 2015) (discussing a millennial who says work-life balance is “necessary for success” and who turned down higher paying positions with more money to instead stay with an employer who let him work remotely).

## IV. ON BALANCE: LEADING BY LEAVING

When talented women and men leave large law firms in search of balance in their personal and professional lives, they are demonstrating leadership. This Part considers what women and men leaving big law are seeking and where they are finding it. This Part concludes with thoughts on why we should look to these departing lawyers as leaders, rather than worry that they have failed to “lean in.”

Balance can be a loaded word. Professionals are warned that there is no such thing as “balance.”<sup>65</sup> It is elusive, so it should not be the goal. But that dismissal of balance misses the point that a lawyer in many workplaces can have a more balanced life than the big law lawyer. A career that does not leave a person time to go to the store, cook meals, drive to, attend, or participate in a child’s activities, or have interests or hobbies is not balanced.<sup>66</sup> This is the life of most associates and partners in large law firms. Saying there is no such thing as balance is incorrect. Many lawyers’ lives are more balanced than this, and both men and women are leaving large firms in search of such balance.<sup>67</sup>

The women and men leaving big law are not leaving the law.<sup>68</sup> The vast majority of these departing lawyers continue to work in a different setting.<sup>69</sup> Opportunities for some include positions in government, non-profits, and companies as in-house counsel.<sup>70</sup> Unlike jobs in large law firms, lawyers report that these positions can provide a “clearer path to advancement” and more predicta-

<sup>65</sup> See, e.g., Jennifer Dulski, *There’s no such thing as work-life balance*, Fortune (October 14, 2014), <http://fortune.com/2014/10/14/theres-no-such-thing-as-work-life-balance/>

<sup>66</sup> See *supra* notes 23-25 and accompanying text (describing the time commitment necessary to bill over 2,000 hours a year).

<sup>67</sup> Barsh & Yee, *supra* note 26, at 3 (reporting that women in the survey change jobs to “pursue greater satisfaction across all parts of their lives” and that a “sizable percentage” of male college graduates surveyed “reported the same motivation to gain greater balance.”); DEBORAH L. RHODE & AMANDA K. PACKEL, *LEADERSHIP LAW, POLICY, AND MANAGEMENT*, 422-24 (Wolters Kluwer 2011) (describing the social costs of gender inequalities) (describing the price that men pay as the result of the “pressures to be the primary breadwinner and to conform to the hypermasculine work ethic that characterizes many upper-level positions.”).

<sup>68</sup> \_\_\_\_\_ . Cf. Ely, *supra* note 29, at 7 (in a study of Harvard Business School graduates, researchers found that only 11% of generation x and baby boomer left the work force to care for children fulltime).

<sup>69</sup> *Id.*

<sup>70</sup> Triedman, *supra* note 9, at 5. See, e.g., Susan B. Myers, *Moebius Strip of Work-Life Balance*, in *IT’S HARDER IN HEELS: ESSAYS BY WOMEN LAWYERS ACHIEVING WORK-LIFE BALANCE*, 100 (Vandeplas Publishing 2007) (describing her choice after becoming a parent to leave a large law firm for a “somewhat more manageable” in-house); Kira Dale Pfisterer, *When Three Fill Two: Part-Time Strategies For Full-Time Jobs*, 51 Feb Advocate (Idaho) 15, 15-16 (describing how two women and one man fill two full-time federal clerkship positions as a way to achieve work-life balance)

ble schedules.<sup>71</sup> Others find solo practices or academia to be attractive alternatives to big law.<sup>72</sup> In both of these career paths, attorneys largely control their own schedules and can continue to use their lawyering skills working in an area of the law that they enjoy.<sup>73</sup> Other departing big firm lawyers join boutique firms, an attractive option for well-credentialed attorneys who want to leave big law but still do interesting work in a setting that may require less face time in the office.<sup>74</sup>

In sum, former big law lawyers can find fulfillment in a new workplace that allows them to continue to perform at a high level. Lawyers want to keep using the skills they developed in big law and continue (or start) working on issues that are interesting or meaningful to them.<sup>75</sup> Finding a career that involves meaningful work and allows the development of mastery are two important factors in professional motivation and happiness.<sup>76</sup> Even though they are making less money, lawyers are fulfilled in these positions in part because of they continue to use their talents and handle work that matters.

Perhaps even more important, lawyers gain a large measure of autonomy when they make such a move.<sup>77</sup> When attorneys have more control over their time, they stand to gain both personally and professionally. On the professional

<sup>71</sup> Triedman, *supra* note 9, at 5. *But see* Eli Wald, *In-House Myths*, 2012 WIS. L. REV. 407, 408-09 (2012) (making the case that in-house counsel positions are not a haven for people seeking work-life balance, diversity, and equality in the workplace).

<sup>72</sup> *See, e.g.*, Uelmen, *supra* note 24, at 81-82 and n.1. Recognizing that she was able to balance career and family as a professor but not in the inflexible and demanding world of the State Department, lawyer Anne-Marie Slaughter explained, “[H]aving it all . . . depended almost entirely on what type of job I had.” Slaughter, *Can’t Have it All*, *supra* note 18, at 6-7.

<sup>73</sup> *Id.* *See also* Randall C. Rechs, *Teamwork Works for Us*, in *Sharing the Pants: Essays on Work-Life Balance by Men Married to Lawyers*, at 75-80 (Vandeplas Publishing 2009) (describing his solo practice as the alternative to the fifty and sixty hour weeks he worked at the beginning of the legal career as a way to be involved in his children’s lives and support his wife’s legal career).

<sup>74</sup> Debra Cassens Weiss, *Some BigLaw firms face associate shortages; boutiques are partly to blame*, ABA Journal, February 26, 2016, available at [http://www.abajournal.com/news/article/some\\_biglaw\\_firms\\_face\\_associate\\_shortages\\_boutiques\\_are\\_partly\\_to\\_blame/?utm\\_source=maestro&utm\\_medium=email&utm\\_campaign=weekly\\_email](http://www.abajournal.com/news/article/some_biglaw_firms_face_associate_shortages_boutiques_are_partly_to_blame/?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email) (noting big firm hiring more entry-level associates in 2016, which may be explained by midlevel associates leaving for opportunities in boutique firms).

<sup>75</sup> *See supra* note 37 and accompanying text (explaining that big firm part-time arrangements are unsuccessful because they have failed to give lawyers interesting work and allow them to use the skills they have developed).

<sup>76</sup> DANIEL H. PINK, *DRIVE: THE SURPRISING TRUTH ABOUT WHAT MOTIVATES US*, 108-48 (Riverhead Books 2009) (describing mastery and purpose as two components of motivation).

<sup>77</sup> Slaughter, *Can’t Have it All*, *supra* note 18, at 7 (quoting Mary Matalin who stepped down after two years in the White House to spend more time with family, as saying, “Having control over your schedule is the only way that women who want to have a career and a family can make it work.”).

front, autonomy is the third in the trifecta of factors that shapes workplace motivation.<sup>78</sup> On the personal front, more autonomy means the ability to make choices about how to juggle priorities between work and home.<sup>79</sup> Studies recognize that shared parenting and financial responsibility is good for men, women, and families.<sup>80</sup>

The attorneys who choose to leave elite firms to seek balance are not failures. It demonstrates self-awareness and vision – key qualities associated with leadership – for an over-achiever to leave the money and prestige of practicing law at a large law firm in order to seek more balanced and fulfilling lives.<sup>81</sup> While these lawyers could have sacrificed balance in exchange for career advancement, these lawyers made a different choice. They can serve as role models and leaders for the next generation of lawyers – as they plan how to strike the right balance of personal and professional success.

Further, these balance-seeking lawyers are also leaders to the extent they are able to influence structural change in large law firms. Eventually, the continuing exodus of talented attorneys should cause large firms to adapt. The following section considers how leadership education can introduce these lessons to students of both genders.

#### V. LEADERSHIP EDUCATION: WORK-LIFE BALANCE AND GENDER DIVERSITY IN THE PROFESSION AS “ATTORNEYS’ ISSUES” AND NOT “WOMEN’S ISSUES”

We do our students a disservice if we frame issues of work-life balance and gender disparity in the profession as “women’s issues.”<sup>82</sup> These are issues that must be addressed by men and women in the legal profession.<sup>83</sup> As highlighted

<sup>78</sup> Pink, *supra* note 76, at 85-108 (describing the part that autonomy plays in motivation).

<sup>79</sup> Kay & Gorman, *supra* note 5, at 307 (citing a survey of San Diego County lawyers that revealed that “balance and flexibility” were a priority for women lawyers with children and that this “translated into different choices of legal employment, plus good child care, as well as supportive spouses and family, to make legal careers work.”).

<sup>80</sup> Sandberg, *supra* note 27, at 24, citing SHARON MEERS & JOANNA STROBER, GETTING TO 50/50 (“The data plainly reveal that sharing financial and child-care responsibilities leads to less guilty moms, more involved dads, and thriving children.”).

<sup>81</sup> DEBORAH L. RHODE, *LAWYERS AS LEADERS*, 4 (Oxford University Press 2013) (explaining that characteristics of leadership cluster in five categories: values, personal skills (including self awareness), interpersonal skills, vision, and technical competence).

<sup>82</sup> Wald, *supra* note 8, at 2247-48 (arguing that the glass ceiling problem is compounded by “a common perception that the underrepresentation of women lawyers is a ‘women-issue.’”).

<sup>83</sup> Some people may believe that men have been “having it all” for years – the career and the family. *See, e.g.*, Slaughter, *Can’t Have it All*, *supra* note 18, at 13 (asserting that a balanced life is more elusive for women than men, as evidenced by the number of men (but not women) in top positions with children). But that is not

throughout this article, these problems impact both genders. Moreover, gender equality has an impact on the legal profession.<sup>84</sup> A diverse law firm is a better law firm.<sup>85</sup> It does not make sense to think that one gender can address these issues irrespective of the actions of the other. An ideal time to start having these discussions is during law school.

Law students should explore why working toward balance is a worthy and necessary goal for both career success and personal happiness.<sup>86</sup> They should be encouraged to explore and identify their values so they can determine the balance that makes sense in their lives.<sup>87</sup> The stories of lawyers who have left large law firms can be important case studies for law students to consider as they chart out their possible future path.<sup>88</sup>

One benefit of this approach is that it gives time for planning and reflection before a person's perspective is skewed by life (and rewards) inside of a large law firm. While theoretically, attorneys may like the idea of work-life balance, it is easy for competitive individuals to shift their focus to doing whatever is necessary to succeed by the standards of the firm's top performers. Before they are immersed in that world, it is useful for students to make a plan to achieve the things that are important to them.

Law students also should explore the consequences of imbalance in their professional lives. Beyond personal sacrifices of health, happiness, and family, a lack of balance can have an impact on the profession as a whole. Lawyers who choose to devote all of their time to a demanding workplace perpetuate a system that has no room for those who seek balance. If the firm norm is an attorney who spends 3,000 hours a year in the office and is supported by a fulltime at-home caregiver, then an attorney who wants to spend 1,800 hours a year in the office and care for self and family will not be able to keep up. Attorneys should understand that when they make this choice to devote everything to the firm, they are making it harder for other attorneys to have balance and ultimately making it more difficult for firms to achieve gender diversity.

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accurate. The men at the top certainly have had the career, but most have not had the time to care for themselves or their families -- other than financially.

<sup>84</sup> See Rhode & Packel, *supra* note 67, at 412 (describing the social costs of gender inequalities); Avivah Wittenberg-Cox, Gender at Work is Not a Women's Issue, Harvard Business Review (Nov. 17, 2015) (asserting that millennials are framing the issue of gender balance as an issue that unites men and women); Avivah Wittenberg-Cox, Gender Balance is Hard, but It's Not Complicated (Oct. 15, 2014) (businesses need their own "fact-based explanation" for why gender balance is good for business).

<sup>85</sup> RHODE, LAWYERS AS LEADERS, *supra* note 81, at 146-48 (making the case for gender equity in law firm leadership).

<sup>86</sup> Bolick, *supra* note 63 at 2 ("[S]eeking out a more balanced life isn't just a women's issue, it's a human issue, and we'd all -- men and women -- be a lot better of if we addressed . . . the issue that way.").

<sup>87</sup> See, e.g., Doug Blaze, Sarah Derrington & Brad Morgan, Syllabus, Leading as Lawyers: Trans-Pacific Perspectives, Self Awareness, Wellness, and Balance (on file with author).

<sup>88</sup> See *supra* notes 68-74 and accompanying text.

Students considering a career in large law firms should be prompted to recognize their potential for changing an environment that currently makes gender diversity difficult to achieve.<sup>89</sup> Workplace norms and structures can evolve.<sup>90</sup> While most baby boomers (the people in management positions today) do not have full-time working spouses, the vast majority of millennials are part of dual income partnerships and seek (or will seek) work-life balance.<sup>91</sup> While millennials will face resistance, they may have sufficient numbers to change the legal workplace.<sup>92</sup>

In order to achieve that culture shift, it will take more lawyers of both genders seeking more reasonable (i.e., “part-time” or “flexible” by big firm standards) schedules. They will have to demand positions that allow the benefits that attorneys are currently finding outside of big law: an opportunity use their full skill set to do interesting work while also having more control over their schedules.<sup>93</sup> As Deborah Rhode has explained, “Gender hierarchies will persist until concerns about quality of life become more central professional priorities.”<sup>94</sup>

While these options will not be as lucrative financially, that is not as important as the other attributes of such positions.<sup>95</sup> Further, these flexible and part-time options should not exclude a person from consideration for partner-

<sup>89</sup> Rhode, *supra* note 5, at 1449 (“Organizations’ tendency is to attribute racial, ethnic, and gender differences in leadership to differences in choices, capabilities, and commitment that the organization has limited ability or responsibility to influence.”); Slaughter, *Can’t Have it All*, *supra* note 18, at 41 (arguing that for women to achieve equality, we must “stop accepting male behavior and male choices as the default” and must instead change policies to accommodate women’s choices.”).

<sup>90</sup> Slaughter, *Can’t Have it All*, *supra* note 18, at 38-39 (noting that more male law students are interested in work-life balance, acknowledging that “aspirations are easier than concrete trade-offs,” but asserting “once work practices and work culture begin to evolve, those changes are likely to carry their own momentum.”); Kay, *supra* note 39, at 1233 (explaining the need for not only workplace policies to change but also workplace culture that puts so much emphasis on high billable hours).

<sup>91</sup> Schulte, *supra* note 64, at 1-2 (citing results from a survey of over 10,000 workers; close to 80% of millennials are part of a dual income couple; members of this age group were most likely to report they would “take a pay cut, forgo a promotion, or be willing to move to manage work-life demands better”).

<sup>92</sup> *Id.*

<sup>93</sup> See *supra* notes 75-80 and accompanying text.

<sup>94</sup> Deborah L. Rhode, *Gender and Professional Roles*, 63 *FORDHAM L. REV.* 39, 64 (1994).

<sup>95</sup> Pink, *supra* note 76, at 9 (arguing that businesses assumptions about pay for performance are “outdated, unexamined, and rooted more in folklore than in science.”). See also, Kay & Gorman, *supra* note 5, at 307 (citing a survey of San Diego County lawyers that revealed that “balance and flexibility” were a priority for women lawyers with children and that this “translated into different choices of legal employment, plus good child care, as well as supportive spouses and family, to make legal careers work.”).



ship.<sup>96</sup> Again, law firm partners working fewer hours will not enjoy the same compensation as full-time partners, but the partnership designation is not (or need not be) just about the money. It should signify recognition of the contribution of the lawyer at the firm and give the lawyer a seat at the table in partner decision-making and leadership positions. While certain leadership positions likely cannot be held by part-time attorneys, keeping those attorneys in the firm and elevating them to partnership while working reduced schedules will ensure leadership is an option in the future.<sup>97</sup>

The lawyers (and the firms) that determine how to make flexible and part-time work fit this mold will have success keeping talented women and men who would otherwise leave big law for balance.<sup>98</sup> Legal educators should help prepare lawyers for the roles they can play in seeking balance and leading their firms to accepting new models for the practice of law.

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<sup>96</sup> Ely, *supra* note 29, at 8 (discussing a professional woman's decision to leave part-time work at her firm because she received less challenging work and "being part-time took me out of the structured review and promotion ladder.").

<sup>97</sup> Rhode, *supra* note 5, at 1459-60 (arguing that workplace structures must adapt so that lawyers can work reduced hours to accommodate family needs and be allowed to cycle back into full-time work and leadership positions when personal obligations decrease).

<sup>98</sup> *But see* Wald, *supra* note 8, at 86 (asserting that gender equality is unlikely in the near future in elite law firms "given their dominant inhospitable professional ideology.").