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The Motherhood Myth, Traditional Firms, and the Underrepresentation of Women

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THE MOTHERHOOD MYTH, TRADITIONAL FIRMS, AND THE UNDERREPRESENTATION OF WOMEN

Paula Schaefer*

Abstract

This Article makes the case that the motherhood narrative—that women are underrepresented in partnership and leadership ranks of law firms because they are their children’s primary caregivers—is a myth. After detailing how the motherhood myth has been used as an excuse for a lack of meaningful change, the Article provides evidence of an alternative narrative: “traditional firms” are structurally and culturally antagonistic to women. These firms are characterized by extreme work expectations and heavy reliance on the unpaid labor of stay-at-home spouses (SAHSs). Traditional firms’ dependence upon SAHSs is central to maintaining the firm status quo and driving out women.

Next, the Article describes how firm modernization would allow women to gain parity in firm partnership and leadership ranks. The Article argues that modernization should be measured in terms of firm reliance on SAHSs and then responds to counter-arguments that modernization is not possible in the service of clients and is unlikely to improve the retention of women. Finally, the Article explains how three different groups—bar associations and other organizations, firms, and attorneys—should collect and analyze data about firm reliance on SAHSs as a first step towards change.

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* Art Stolnitz Distinguished Professor of Law, University of Tennessee College of Law. This Article grew out of a presentations of my “motherhood myth” research at a Roundtable on Gender, Power, Law & Leadership at Law and Society and at an East Tennessee Lawyers Association for Women continuing legal education program. I appreciate the questions and encouragement I received from both audiences that helped me develop this piece. I owe special thanks to Emily Gould and Sara Andersen for their excellent research assistance. The reader’s input on this working draft would be appreciated. Please contact the author with feedback and before citing this working draft.

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Introduction

Many attorneys tell a story about motherhood when asked to explain why law firms cannot retain women. The story is that after women attorneys become mothers, they become the primary caregivers to their children and do not receive sufficient parenting support from their spouses. Ultimately, these lawyer-moms realize that something has to give, so they choose being a mom over being a lawyer.

This motherhood narrative is problematic for two reasons. First, it is not true. Motherhood does not cause women to leave law firms. There is often

a *correlation* between parenthood and women (and also men) leaving law firms. But parenthood is not the cause. Relatedly, in the firms where women exit in droves after parenthood, it is untrue that the women could have remained and succeeded if they had only insisted on more parenting help from their spouses. Further, they are not choosing motherhood over career—most are leaving firms for a better workplace.

Second, the motherhood-causes-women-to-resign story provides firms with an excuse not to change. If we believe the motherhood narrative, it follows that law firms are powerless. They cannot ask women to forego becoming mothers. And they cannot control the fact that women are the primary caregivers. They cannot change the fact that these lawyer-moms fail to demand that their spouses be equal partners in parenting. All of this means that women—and not firms—have to change in order for women to gain ground in law firms.

This Article makes the case that the motherhood narrative is a myth. Part I lays the foundation for understanding the representation of men and women in the legal profession. The data reflects that women and men have been entering law school and joining law firms in roughly equal numbers since 1999. In fact, there are currently more women than men in both law schools and associate positions in law firms. However, substantially more men than women stay at firms to achieve partnership and leadership roles. The question is why.

Part II turns to the motherhood narrative as a commonly relied-upon explanation, providing examples of how the story is used to excuse a lack of improvement in the retention of women. Next, Part III lays out the evidence supporting a different narrative: traditional firms are hostile environments for women lawyers because these firms are designed by and for attorneys with stay-at-home spouses (SAHSs). SAHSs make it possible for attorneys to devote all of their waking hours to the firm, which is a traditional firm requirement for success. If an attorney is single or part of a dual-career family, the lack of a SAHS makes advancement difficult or impossible—particularly after parenthood. Because female lawyers are much less likely than male attorneys to have a SAHS, traditional firms cannot and do not retain women.

Part IV argues that rejection of the motherhood myth allows firms to take ownership of the problem and chart a path for modernization. This discussion proposes a metric to track firm modernization: reduced reliance on SAHSs. The goal is to reduce SAHS reliance until the percentage of women at firm partnership levels matches the percentage of women who entered the firm as associates in each partnership class. This Part concludes by

responding to possible arguments that: (1) modernization is inconsistent with service needed by clients; (2) that the goal of modernization will not motivate firms; and (3) that, even if modernization could be a motivator, it will not help address the myriad challenges that cause women to leave.

From there, Part V explains the need for bar associations and organizations, firms, and lawyers to gather data and assess firm reliance on SAHSs. After describing the methodology for such data collection, the discussion turns to the ways each group can use data and analysis to further various interests with the ultimate goal of fair representation of women in law firms.

Finally, the Conclusion acknowledges the staying power of the motherhood myth and describes steps lawyers should take to advance its death.

I. By the Numbers: Women and Men in U.S. Law Schools and Law Firms

From 1999 to 2015, women and men attended U.S. law schools in roughly equal numbers, with women's representation ranging from 47% to 49% throughout those years.¹ Since 2016, women have been the majority of J.D. students, with the percentage growing each year.² In 2023, women made up 56.25% of J.D. enrollment nationwide,³ with 86.29% of law schools having a majority-female student body.⁴ Also noteworthy, seventeen of the top twenty law schools (as ranked by *U.S. News & World Report*) had a majority-female student body in 2023.⁵

¹ *ABA 2023 Profile of the Legal Profession* (Nov. 2023) [*2023 Profile of the Legal Profession*], at 127. The ABA notes that enrollment from 1970-2013 includes all law students but from 2014-present only JD students. *Id.* For a full discussion of women's presence in U.S. law schools and the factors that influenced change, see Elizabeth D. Katz, *et al.*, *Women in U.S. Law Schools, 1948-2021*, 15 *J. OF LEGAL ANALYSIS* 48 (Aug. 15, 2023)

² *2023 Profile of the Legal Profession*, *supra* note 1, at 127 (for years 1970-2022; *Law School Rankings by Female Enrollment*, *ENJURIS* (2023), at 2 (for years 2016-2023) [hereinafter *Enjuris Law School Rankings*]. Beginning in 2016, the ABA gave law students the option to select "other" when asked to identify their gender. From 2016-2022, the percentage of students selecting "other" grew from .04% to .58%. In 2023, the option of "other" was replaced with two new options: "prefer not to report" and "another gender identity." In 2023, a combined total of .9% of students chose these options. *Id.* at 8.

³ *Enjuris Law School Rankings*, *supra* note 2, at 2.

⁴ *Id.* at 5.

⁵ *Id.* at 3-4.

The number of women working in U.S. law firms as associate attorneys follows a similar path. NALP⁶ and NAWL⁷ track representation of women in U.S. law firms using slightly different firm databases, but find similar results.⁸ According to NALP data, women's representation among associates in law firms slowly grew from 41.39% in 1999 to 45.66% in 2009.⁹ From 2010 to 2017, the percentage of female associates hovered around 45%,¹⁰ and then began gaining close to a percentage point every year from 2018 to 2023.¹¹ For the first time in 2023, women outnumbered men as law firm associates, coming in at 50.3%.¹²

During this same time period, women have been substantially underrepresented in the partnership and leadership ranks of these firms. According to NALP, in 1999, firm partners were 15.04% female.¹³ That number did not surpass 20% until 2013.¹⁴ Ten years later in 2023, the percentage of female partners was 27.76%.¹⁵ For firms with two-tier

⁶ NALP is the acronym for the National Association for Law Placement, Inc. <https://www.nalp.org>. Since 1991, NALP has analyzed law firm diversity. It relies upon data from law firms in its Directory of Legal Employers. Legal employers in the database (available at nalpdirectory.com) range in size, but the vast majority have more than 500 lawyers. *Id.* (Website last viewed on March 19, 2024, at which time 620 legal employers in the directory had 501 or more lawyers, 140 employers had 201-500 lawyers, and 119 employers had 200 or fewer lawyers).

⁷ NAWL is the National Association of Women Lawyers. Its annual surveys and reports focus on representation and compensation of women in the legal profession and are available on its website. NAWL Research, available at: <https://www.nawl.org/research>. The NAWL surveys are sent to Am Law 200 law firms. *Id.*

⁸ For NALP data, see *supra* notes 9-16 and accompanying text. For the most recently reported NAWL data, see 2021 NAWL Report, *NAWL Survey on the Promotion and Retention of Women in Law Firms*, 5 ["NAWL 2021 Report"], available at <https://www.nawl.org/research> (reporting data on female associates, non-equity partners, and equity partners for 2005, 2010, 2016, and 2020. For 2020, NAWL reported from AmLaw200 firm data that 47% of associates, 32% of non-equity partners, and 22% of equity partners were women).

⁹ NALP, *2023 Report on Diversity in U.S. Law Firms*, NALP, (Jan. 2024) ["NALP 2023 Report"]. The 2023 analysis was based on the information from 812 law offices then contained in NALP's Directory of Legal Employers. *Id.* at 13.

¹⁰ *Id.* at 15 (Table 1. Women and People of Color at Law Firms, 1991-2023).

¹¹ *Id.* (the percentage of women was 45.91% in 2018, 46.77% in 2019, 47.45% in 2020, 48.21% in 2021, 49.42% in 2022, and 50.31% in 2023).

¹² *Id.* See also Debra Cassens Weiss, *For the First Time Women Make Up Majority of Law Firm Associates, New NALP Report Says*, ABAJournal.com (Jan. 10, 2024).

¹³ NALP 2023 Report, *supra* note 9, at 15.

¹⁴ *Id.*

¹⁵ *Id.*

partnerships, in 2023 women were 23.7% of equity partners and 33.3% of non-equity partners.¹⁶ NAWL also provides the following information about women in leadership in Am Law 200 firms, reporting that only 12% of firm managing partners, 28% of governance committee seats, and 27% of practice leaders were women in 2020.¹⁷

Chambers Associate reports on percentage of female partners in 98 large U.S. firms.¹⁸ In 2023, 4 firms refused to provide information on gender diversity; 6 firms reported 10-19% female partners; 87 firms reported 20-39% female partners; and only one firm reported over 40% female partners.¹⁹

Relying upon detailed data from law firms of all sizes across the U.S., NALP describes the underrepresentation of women as “a pattern that holds true across all firm sizes and most jurisdictions.”²⁰ According to NAWL, its research on Am Law 200 firms from 2006 to the present demonstrates the “steady and significant attrition of women from law firms.”²¹

II. Motherhood Narrative as Explanation for Underrepresentation of Women in Law Firms

“Nothing can derail a [legal] career faster than the

¹⁶ *Id.* at 24, Table 7. Looking at total partners at two-tier firms, female equity partners are 13.6% of all partners and female non-equity partners are 14.2% of all partners. *Id.* at 25, Table 8.

¹⁷ NAWL 2021 Report, *supra* note 8, at 6.

¹⁸ The 2023 Chambers Associate Survey of Numbers of Women in Associate and Partner Positions, available at <https://www.chambers-associate.com/law-firms/diversity/gender-diversity> (last visited July 10, 2024).

¹⁹ *Id.* Noteworthy firms on the list include Akin Gump with 42.7% women partners, Seward & Kissel with 10%, Millibank with 15.1%, Linlaters with 17%, Proskaur Rose with 16.8% Kramer Levin with 18.6%, and Irell & Manella with 19%. *Id.*

²⁰ NALP 2023 Report, *supra* note 9, at 8. *See also id.* at 26-27, Table 9 (detailing percentage of women partners by firm size and office location). In terms of overall representation in U.S. law firms, female attorneys in all roles (partners, associates, counsel, and non-traditional track/staff attorney positions) were 28.55% of firm attorneys in 1999 and 39.5% of firm attorneys in 2023. *Id.* at 16.

²¹ 2022 NAWL Report, *Behind the Numbers Feedback from Stakeholders*, 1 [“2022 NAWL Report”], available at <https://www.nawl.org/research>. Recognizing that the data was largely unchanged from year-to-year, in 2022, NAWL forewent a survey and instead held focus groups with fifty-one attorneys aimed at understanding the experiences of attorneys. *Id.*

responsibilities of motherhood.”²²

This sentiment—that motherhood is to blame—is a common narrative delivered by lawyers asked to explain the underrepresentation of women in law firms. The following are a few additional representative examples. A law firm partner explains, “We don’t tend to lose women to other firms. 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.”²³ A male partner says that people “underestimate the gravitational force of having kids” and concludes that “[a] lot of women who thought they would never slow down find themselves [leaving firms]. That has a lot to do with the winnowing out of women, especially in the big firms.”²⁴ Finally, another attorney colorfully and condescendingly proclaims, “[Litigation] work is incredibly demanding and it’s damn hard when you’re also a mom. I have the utmost respect for mothers. It’s the coolest job in the world.”²⁵

A recurrent sub-theme of the motherhood narrative is that attorney-moms are held back by being their kids’ primary caregivers and not receiving enough help from their spouses. In an article with a headline asking if one can be a mother and law firm partner, a leading scholar on the legal profession opines that time demands of practice disproportionately impact women “because they still bear *the majority* burden of childcare and child-raising, and the sole burden of childbearing.”²⁶ Another commentator states that women “remain the primary family caretakers for the young and the

²² Susan Smith Blakely, *Are Women Lawyers Paying Enough Attention to Upward Mobility?* ABAJournal.com (June 29, 2021). In a response to this article, then-ABA President Patricia Lee Refo said that women should not be lectured about how to adjust their lives to be successful or be told that “[they] must choose between [their] career[s] and [their] family.” Patricia Lee Refo, *Women’s Success in Legal Careers: Lack of Advancement is not a ‘Woman’ Problem, It’s a ‘Profession’ Problem*, ABAJournal.com, (July 6, 2021).

²³ Julie Triedman, *A Few Good Women*, THE AMERICAN LAWYER (ONLINE) (May 28, 2015).

²⁴ HOLLY ENGLISH, GENDER ON TRIAL: SEXUAL STEREOTYPES AND WORK/LIFE BALANCE IN THE LEGAL WORKPLACE, 227 (ALM Publishing 2003). Similarly, a male partner explains that people “underestimate the gravitational force of having kids” and concludes that “[a] lot of women who thought they would never slow down find themselves [leaving firms]. That has a lot to do with the winnowing out of women, especially in the big firms.” *Id.* at 227 (ALM Publishing 2003).

²⁵ Vivia Chen, *Motherhood is the Culprit. Really?*, The Careerist.typepad.com (2018).

²⁶ Madison Darbyshire & Barney Thompson, *Can You Be a Mother and Senior Law Firm Partner?; The Number of Women at the Top of Big Firms Remains Stubbornly Low*, FINANCIAL TIMES (Apr. 15, 2019), quoting David Wilkins, director of the Center on the Legal Profession at Harvard Law School (emphasis added).

old and supervisors of the home.”²⁷ Smith Blakely captures the primary caregiver argument in these patronizing words:

Although many lawyer moms may have spouses and mates who help ease their burden at home, little children typically look to Mommy for on-time meals, rides to school. . . , and general comfort and care. And that is especially true when Daddy is a busy professional, too.²⁸

The primary caregiver story is given heft by researchers.²⁹ The ABA’s 2019 Report *Walking Out the Door*,³⁰ was based on surveys of 1,262 men and women practicing for 15 years or more in the 500 largest U.S. firms.³¹ Based on those surveys, *Walking Out the Door* concluded that a much higher percentage of lawyer-moms than lawyer-dads is solely responsible for parenting tasks, including arranging childcare (54% vs. 1%), leaving work for childcare (32% vs. 4%), and children’s extracurricular activities (20% vs. 4%).³² Based on this data, the ABA concludes that women struggle to strike an acceptable work/life balance, and they are much more likely “to be solely responsible for multiple dimensions of child care.”³³

The ABA’s 2023 *Profile of the Legal Profession*³⁴ and its 2021 report *In Their Own Words*³⁵ cite *Walking Out the Door*’s data and conclusions, with *In Their Own Words* building on that data with information gathered from focus groups and interviews.³⁶ *In Their Own Words* describes some attorney-

²⁷ See, e.g., HORN EPSTEIN, *supra* note 69, at 43-44. See also *id.* at 134 (quoting a female attorney who opines that firms “still believe that women will play a primary role in the home without help, or with little help, from their partner.”).

²⁸ Smith Blakely, *supra* note 22.

²⁹ These reports provide many excellent data compilations of data on a variety of issues, important observations, and useful suggestions, as discussed throughout this Article. This Article’s negative critique of the reports is the focus on the issue of moms being primary or sole caregivers and the advice (of some reports) that the solution is for lawyer-moms to get more help from their husbands.

³⁰ Roberta D. Liebenberg & Stephanie A. Scharf, *Walking Out the Door, The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice* (ABA 2019) [“*Walking Out the Door*”].

³¹ *Walking Out the Door*, *supra* note 30, at 3.

³² *Id.* at 12

³³ *Id.*

³⁴ 2023 *Profile of the Legal Profession*, *supra* note 1, at 78-81.

³⁵ Joyce Sterling & Linda Chanow, *In Their Own Words, Experienced Lawyers Explain Why They are Leaving Their Law Firms and the Profession*, v (ABA 2021) [“*In Their Own Words*”], at 1-2 and 29, n. 77 and accompanying text.

³⁶ *Id.* at 5 (describing methodology of conducting focus groups and individual

moms' ability to stay at the firm as being made possible by their husbands' becoming "primary caregivers."³⁷

The ABA report *Legal Careers of Parents and Child Caregivers*, which was published in 2023, relied upon a new survey of over 8,000 lawyers in various practice settings.³⁸ It asked very similar questions and reached the same conclusion as earlier ABA reports: a much higher percentage of lawyer-moms than lawyer-dads report being solely responsible for each item on a list of childcare duties.³⁹ The report concludes, "[M]others have a far more consuming 'double duty' or 'second shift' than fathers."⁴⁰

Commentators rely on these ABA reports to reinforce the idea that women lawyers are not getting enough help at home and that is holding them back in law firms. One commentator cites *Walking Out the Door* in asserting that women's caregiving burden at home is why women are not advancing at work and declaring that law firms "cannot directly affect gender equality at home."⁴¹ Another relies upon *Legal Careers of Parents and Child Caregivers* in parroting that women are more often sole caregivers at home and that this leaves women feeling as if their day never ends.⁴²

interviews with a total of 116 individuals who had received their JDs 20-30 years ago; 56 women and 7 men were practicing in firms; 14 women were practicing in-house; and 39 women were no longer practicing) and 29-31 (describing data from interviews and focus groups about the challenges of women navigating, among other things, parenthood and the time demands of law firms).

³⁷ *Id.* at 20 (quoting one mom as saying her husband "took over all of [the domestic responsibilities]" and another saying "[m]y husband is 'Mr. Mom'. . ."). It is important to note that the quotes relied upon actually convey that the husbands were doing all (or at least the vast majority of) parenting. The importance of this distinction becomes apparent in Subpart III. Evidence of a Compelling Counter-Narrative: Traditional Firms Drive Out Women (discussing the importance of a SAHS to the success of a lawyer in a traditional firm).

³⁸ ABA Commission on Women in the Profession, *Legal Careers of Parents and Child Caregivers Results and Best Practices from a National Study on of the Legal Profession*, xi (ABA 2023) ["*Legal Careers of Parents*"], available at <https://www.americanbar.org/content/dam/aba/administrative/women/2023/parenthood-report-2023.pdf>. The research also involved a series of focus groups. *Id.* at 4.

³⁹ *Id.* at 31-36.

⁴⁰ *Id.* at 36.

⁴¹ Andrea Sue Kramer & Alton B. Harris, *Getting Beyond Bias in the Legal Profession*, ABA LAW PRACTICE TODAY, Americanbar.org (Nov. 15, 2023). The article says that firms can provide more leave, flexibility, better daycare options, etc., but the article does not recognize that firms play a role in attorney-moms having a disproportionate caregiving obligation when compared to attorney-dads that they are compared to at work.

⁴² Amanda O'Brien, *Mothers Still Face Disproportionate Burden in Legal Field*, ABA

From here, many explain that the needed change—the one that would fix women’s underrepresentation in law firms—is for women lawyers to ask their spouses to do an equal amount of the caregiving.⁴³ Just as Sheryl Sandberg famously put it in her book *Lean In*, the key is for women to “make your partner a real partner.”⁴⁴ The ABA’s *Best Practices for Retention and Advancement of Women Lawyers with Children* lists as its ninth recommendation “Encourage Sharing of Child Care Responsibilities.”⁴⁵ Note well that it is not lawyer-dads the ABA is encouraging to share caregiving, but the lawyer-moms’ spouses: “[W]omen lawyers with children need to encourage their spouses and partners to step up and share the burden of taking care of their children’s needs.”⁴⁶ The only advice the ABA gives *firms* is to “make fundamental structural changes to ensure access to reliable and affordable child care and family care.”⁴⁷

Finally, lawyer-moms can contribute to the motherhood narrative in how they frame their own stories—even as they describe (without naming it) the problem that is the thesis of this Article. For example, in an article titled *How to Retain More Women in Law Firms*, Megan Gray explains that she loved her intense corporate law practice, even though she worked around the clock.⁴⁸ Ten years into her time at the firm, she had a baby and realized something would have to change.⁴⁹ She states, “Nothing can prepare you for the transformation that is motherhood. I believe it changes you alchemically. My pre-baby professional life was not going to work for me post-baby.”⁵⁰

To address her needs, Gray proposed a modified work schedule to her firm: regular 9 to 5 work hours and a commensurate pay cut, while serving client needs with teamwork, communication, and transparency with clients

Report Finds, ALM Law.com (Oct. 25, 2023).

⁴³ *Legal Careers of Parents*, *supra* note 38, at 37 (concluding that for lawyer-moms to succeed in firms, “[t]he allocation of child care and household responsibilities needs to be equally shared by both parents.”).

⁴⁴ SHERYL SANDBERG, *LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD* 104 (2013). Sandberg was speaking generally of women in the workplace and not specifically about women in law firms.

⁴⁵ *Legal Careers of Parents*, *supra* note 38, at 139.

⁴⁶ *Id.* at 139-140.

⁴⁷ *Id.* at 140.

⁴⁸ Megan Elizabeth Gray, *How to Retain More Women in Law Firms*, ABAJournal.com (Sept. 8, 2021).

⁴⁹ *Id.*

⁵⁰ *Id.*

about the arrangement.⁵¹ The partners on her team—both male—rejected her proposal, calling it “incompatible with client needs” and “impossible.”⁵² She resigned, feeling like another statistic, joining other women who felt they had no choice but leave the firm.⁵³ She concludes, “The firm would keep the status quo, and the status quo was male.”⁵⁴

Even though Gray fully describes the problematic structures and attitudes of male law firm leadership, her framing likely reinforces the myth. Readers will leave that article believing that motherhood was the cause of Gray’s departure—just as it has been and will be for so many other lawyer-moms.

III. Evidence of a Compelling Counter-Narrative: Traditional Firms Drive Out Women

A compelling counter-narrative emerges when we study *the firms* that female attorneys have been exiting in droves for decades. These firms—which this Article refers to as “traditional firms”—are characterized by two features: (1) an expectation that all partners and partnership-track attorneys work around the clock, and (2) a heavy reliance on the unpaid labor of SAHSs.⁵⁵ This Part of the Article argues that traditional firms’ unwillingness to modernize—by becoming less reliant on SAHSs—is the reason women are substantially underrepresented in the partnership ranks. In short, the problem is not “motherhood”—a lazy explanation used to shift the responsibility to women.⁵⁶ The actual problem is traditional firms.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See *infra* Part II. A., Traditional Firms, Attorney-Parents. It is worth pausing to state clearly that SAHSs are not “paid” simply because they benefit from the income of their attorney-spouses. Paid employees receive a salary or hourly wages, benefits (like retirement contributions), and pay into the social security system (with matching employer contributions). SAHSs have none of this, and as a result, are entirely reliant upon their continuing relationships with their attorney-spouses or the division of property in a divorce. This is not the same as being paid.

⁵⁶ In her book *Women Money Power*, Jodie Cox shares an anecdote in which a Fortune 500 CEO blames the gender pay gap in his company on the fact that “some women just don’t want to” be promoted after they come back to work after having a baby. Cox writes, “[I]t was astonishing that, as [the CEO] cast around for a quick explanation for why the gender pay gap was so cavernous within this firm, the first thing he landed on was women’s choice. It was as if he was trying to absolve himself of any responsibility in the matter.” Josie

The following discussion reveals that the lawyer-parents who thrive in traditional firms look a lot like Ward Cleaver, the father and breadwinner from the 1950s-1960s sitcom *Leave it to Beaver*.⁵⁷ While much has changed since the 1950's, traditional firms have not. Ward Cleaver had the essential accessory of a successful attorney in 2024: a SAHS who does all the caregiving for children, home, and husband.

A. Traditional Firms, Attorney-Parents, and the Disproportionate Impact on Women

An expectation of nearly constant work or availability—the kind of work that allows time for nothing outside of the practice of law—is one expectation of many law firms, especially large firms.⁵⁸ Most large firms that report a billable requirement place it in the range of 1,900-2,000 hours per year.⁵⁹ The time in the office (or otherwise online) needed to bill this number of hours is understood to be in the neighborhood of 60-80 hours per week.⁶⁰ And that does not include the time expected for socializing and

COX, WOMEN MONEY POWER, pp. 2-3 (Abrams Press 2024). Though this anecdote is drawn from corporate America, it mirrors the lazy lack of introspection and blame-shifting of lawyers explaining the underrepresentation of women in law firms.

⁵⁷ *Leave it to Beaver*, TV Series, 1957-63, IMDb, <https://www.imdb.com/title/tt0050032/>.

⁵⁸ Alissa Rubin Gomez, *The Mismeasure of Success*, 94 ST. JOHN'S L. REV. 927, 927 (2020) (describing the “widespread belief that the ideal big firm lawyer is one who is committed to professional life at all hours of the day and night, and whose personal life is either nonexistent or handled by someone else”); 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, 2389 (2015) (exploring a 24/7 commitment to law practice as a gendered practice of men); *Big Law and Relationships*, TOP LAW SCHOOLS (Sept. 2010) (“There are few careers that rival big law in commitment of time. Even those professionals who tend to work equally long hours (doctors and airline pilots come to mind) are afforded firmer schedules and more inviolable off-time than are big law associates.”).

⁵⁹ See Chambers Associate 2024 Comparison of 97 Firms in the Chambers Associate Database, available at <http://www.chambers-associate.com>, last visited July 20, 2024 (with 35 of 97 firms not reporting or stating that a billable requirement is not applicable and 50 of 97 stating a requirement from 1900-2000 hours). See also Karen Sloan, *Proposed Cap on Lawyer Hours a Tough Sell in Legal Business Boom*, Reuters.com (Nov. 4, 2021) (quoting sources explaining that capping billable hours at 1,800, as proposed by a New York State Bar Association task force, is not realistic for most big corporate firms).

⁶⁰ See, e.g., Sharon Miki, *How Many Hours Do Lawyers Work?*, Clio.com (published May 2021, updated June 20, 2024) (explaining that lawyers at “large” firms average 66 hours per week while lawyers at “Big Law” firms commonly work 80-hour weeks “in large part

networking with other firm lawyers, clients, and prospective clients—critical to both business development and perception as a fully engaged team member.⁶¹ These time demands translate into constant work and little time for self—much less caring for others.⁶² One large firm partner explains the pressure “to work seven days a week, to miss family events, to forgo vacations, [and] to miss needed doctor’s appointment[s].”⁶³

Lawyers without children are often able to keep up this pace with the help of a spouse or partner who takes on the vast majority of household tasks⁶⁴ or by relying on paid services for housekeeping, grocery or meal delivery, lawncare, house or building maintenance, and more.⁶⁵ Some firms may even help by providing their attorneys with concierge services for tasks like dry cleaning, making online purchases like groceries, and arranging other services.⁶⁶

Raising a child (or children) makes it significantly more challenging to

because of billable hour quotas.”); Yale Law School Career Development Office, *The Truth About the Billable Hour*, available at law.yale.edu (calculating that it takes over 2,400 hours “at work” to bill 1,800 hours and over 3,000 hours “at work” to bill 2,200 hours).

⁶¹ See, e.g., Eli Albrecht, *I Left the Big Law Work-Life Balance Trap and Found Integration*, bloomberglaw.com (Mar. 15, 2024) (explaining that as an associate in Big Law, the author “left the house in the dark and came home in the dark” which sometimes included attending “optional” happy hours where his supervisor tracked attendance); Carol J. Williams, *Law Firms and Motherhood Can Mix*, LA TIMES (Sept. 28, 2008), B-1 (describing firm expectations as including working 80-hour weeks and “schmoozing with clients outside the office.”); LAUREN TILLER RIKLEEN, ENDING THE GAUNTLET, REMOVING BARRIERS TO WOMEN’S SUCCESS IN THE LAW, 117 (Thompson West 2006) (a female litigator explains that in her former firm, she was expected to “play in the man’s world” which included billing long hours and drinking with clients).

⁶² For compelling discussions of the constant work demands, see *Big Law and Relationships*, *supra* note 58 (describing the constant work and lack of schedule control required in big law firms); and Joanna Litt, *‘Big Law Killed My Husband’: An Open Letter from a Sidley Partner’s Widow*, THE AMERICAN LAWYER (Nov. 12, 2018) (describing the work demands and stress in her husband’s corporate bankruptcy practice prior to his suicide).

⁶³ Jana Cohen Barbe, *Open Letter from Dentons Partner: Mental Health Crisis Requires Rethinking Firm Business Models*, LEGAL WEEK, INTERNATIONAL EDITION (July 31, 2019).

⁶⁴ *Big Law and Relationships*, *supra* note 58 (the spouse of a Big Law associate explains that given uneven work demands between attorney and romantic partner or spouse, “logic will likely dictate that [the non-attorney] partner should do all of the housework.”).

⁶⁵ Dina Eisenberg, *Try Outsourcing to Achieve Your Law Practice’s Goals*, Attorneyatwork.com (Dec. 20, 2018) (listing “at home” tasks like grocery shopping, lawncare, and meal prep that lawyers should consider outsourcing to recapture time).

⁶⁶ *Walking Out the Door*, *supra* note 30, at 13, n.51.

meet the traditional firm workload demands.⁶⁷ Babies and toddlers need constant care. When kids are in elementary school, middle school, and high school, parenting is no less time-consuming. Care for these school-aged children involves doctor visits, chauffer services to a myriad of social, sporting, and other activities, homework help, and attending the child's conferences, competitions, and activities.⁶⁸

Lawyers at work-around-the-clock firms consistently report that the lawyers who rise through the ranks—including after parenthood—are men with SAHSs.⁶⁹ A lawyer-dad explains, “A construct has been built in the legal profession that in order to advance to leadership. . . if you are married with children, the spouse stays at home.”⁷⁰ One commentator tells women lawyers they will likely need to work part-time or a flex schedule because “men [at the firm] have wives and you do not.”⁷¹ A legal recruiter explains the role of a SAHS in helping an attorney make partner: “The traditional

⁶⁷ Without question, there are numerous non-work obligations that can be just as demanding and taxing for attorneys. Heidi B. (Goldstein) Friedman, *Lawyer Moms—and All Parents for that Matter: You Do You*, Bloomberglaw.com (July 19, 2021) (describing numerous obligations lawyers may have to address such as aging parents). This Article focuses on the parenting obligation not because other external obligations are unimportant but because this Article's specific focus is dispelling the myth of motherhood).

⁶⁸ American Academy of Pediatrics, *Feeling Overwhelmed with Parenting Demands?*, Healthychildren.org (July 26, 2022) (describing some of the demands of raising school-aged children, including helping with homework and handling the logistics of things like after-school activities, sports, and doctor's appointments).

⁶⁹ See, e.g., Vivia Chen, *Female Expats on Why They Left Paul Weiss, Hogan, Paul Hastings*, Bloomberglaw.com (May 24, 2023) [hereinafter *Female Expats*] (attorney-mom who left a large law firm describes most of the partners there as having SAHSs or spouses without demanding jobs); Rubin Gomez, *supra* note 58, at 927 (explaining large law firms' traditional reliance on lawyers “with wives at home to free up work time.”); STILLER RIKLEEN, *supra* note 61, at 122 (quoting a female partner as saying, “I look around at associates who are making it. They have wives who either have no job or a very little job.”).

⁷⁰ *Legal Careers of Parents*, *supra* note 38, at 112. In the same vein, researchers have explained that having a SAHS has historically been a key characteristic of the men thought to “fit” in large firms. Bryant G. Garth & Joyce S. Sterling, *Diversity, Hierarchy, and Fit in Legal Careers: Insights from Fifteen Years of Qualitative Interviews*, 31 GEO. J. LEGAL ETHICS 123, 133–34 (2018).

⁷¹ SUSAN SMITH BLAKELY, *BEST FRIENDS AT THE BAR: THE NEW BALANCE FOR TODAY'S WOMAN LAWYER* 137-38 (Wolters Kluwer 2012) (following the excerpt in the text, the author then adds: “I hope that enough [women] find the perfect nanny or mate or family member who is willing and able to assume a large share of the childcare responsibilities to allow the young women lawyers to continue in full time practice to help accelerate women to the top of our profession.”).

model hasn't changed. There are hardly any women who hang on long enough to make partner. . . . The men who do hang in have wives at home."⁷²

Because attorneys with a SAHS have very few obligations on the home-front,⁷³ they have even more time—and perhaps also more perceived pressure—to devote all their efforts to the practice of law, business development, and socializing with colleagues.⁷⁴ This is the singular standard of success at the traditional firm and these firms cannot imagine, much less implement, an alternative.⁷⁵ One law firm partner puts it like this:

[E]very guy in this firm that has a wife and children, his wife doesn't work. So the guys don't need to leave to get the kid out of day care, or stay home when the kid is sick, or take the kid to the doctor, or any of those things that take time away from the clients. But of course the lady lawyer has to do those things. . . . I think it's just the mothering instinct to say, "The baby's sick and I'm going to stay with the baby." I don't argue with that. I just say this: My partner, Don, who works like an absolute dog, who had nearly 3,000 hours of time last year, you don't hear him saying, "I'm taking the day off today, I'll be at home, I'll take a few files with me." We've never had a big

⁷² ENGLISH, *supra* note 24, at 226.

⁷³ See, e.g., PHYLLIS HORN EPSTEIN, WOMEN-AT-LAW LESSONS LEARNED ALONG THE PATHWAYS TO SUCCESS, 2d ed., 335 (American Bar Association 2015) (quoting lawyer-mom who explains, "The people who run this firm . . . are men with stay-at-home wives. They call them at 6 P.M. and ask what's for dinner. Their dry-cleaning is picked up, the grocery shopping is done, the kids are off to the soccer field, the laundry is done, and the house is clean. They walk in the door and their day is done. I walk in the door and my day is just beginning."); ENGLISH, *supra* note 24, at 223 (quoting a lawyer-dad who explains that having a SAHS allows him to worry about the money and "somewhat with a clear head" put worries about his kids "out of [his] mind and focus on other things."); Amy Conway-Hatcher, *Women Don't Need to Work Harder. The Legal Profession Needs to Evolve*, [Linkedin.com/pulse](https://www.linkedin.com/pulse/women-dont-need-to-work-harder-the-legal-profession-needs-to-evolve/) (July 20, 2021) (explaining the inability of a firm leader with a SAHS to understand the author's time demands as a parent and law firm partner);

⁷⁴ For a discussion of these time demands, see *supra* 58-63 notes and accompanying text.

⁷⁵ A retired partner at a national firm said that partners in management at his firm always had SAHSs, frequently missed family events, and saw this as the definition of success. He concluded that such lawyers "lack the imagination to understand the impact . . . on people who want to do it a different way." STILLER RIKLEEN, *supra* note 61, at 122.

showdown argument about it, but it is the issue.⁷⁶

In marked contrast to lawyering with kids and a SAHS, parenthood for an attorney without a SAHS creates a substantial new challenge of meeting the obligations of both work and home. Paid caregivers cannot address all of a child's needs. A baby cannot be placed in most daycare settings prior to being six weeks old.⁷⁷ Infants and toddlers in daycare need to be cared for by a parent for at least twelve hours a day.⁷⁸ While hiring a nanny can provide more flexibility and childcare coverage for working parents,⁷⁹ the numbers suggest most lawyers have decided this is not as a viable option.⁸⁰ And as noted earlier, school-aged children continue to have a multitude of needs.⁸¹ Attorney-parents in dual-career families must navigate how to share all of the care and involvement that cannot be outsourced (or that they do not want to outsource). And attorney-parents who are single face the challenge of doing everything that cannot be handed over to a co-parent, paid worker, or generous family member or friend.⁸²

Beyond the crushing time demands, lawyer-moms in particular also face stigma and discrimination in their firms after becoming parents—often

⁷⁶ ENGLISH, *supra* note 24, at 229-30.

⁷⁷ Robin McClure, *What to Know about Starting Your Baby at Daycare*, Parents.com (Apr. 22, 2024) (explaining that licensed child care centers can accept babies as early as 6 weeks).

⁷⁸ See, e.g., *How Many Hours Should a Child be in Day Care?*, <https://cremedelacreme.com/blog/how-many-hours-should-children-stay-in-daycare/#:~:text=The%20maximum%20amount%20of%20time,affect%20their%20behavior%20and%20development> (Dec. 9, 2022) (stating that maximum time a child can stay in daycare is typically 12 hours, but that it is best not to go over 10 hours).

⁷⁹ See, e.g., Chen, *Motherhood Culprit*, *supra* note 25 quoting a senior in-house attorney as saying, "I have full-time nannies and housekeepers [a]round the clock. I don't know where the vacuum cleaner is. I've racked up thousands of frequent flyer miles . . . for work. And I don't feel guilty!"); ANNE MURPHY BROWN, *LEGALLY MOM: REAL WOMEN'S STORIES OF BALANCING MOTHERHOOD & LAW PRACTICE*, 25 (ABA 2012) MURPHY BROWN, *supra* note 82, at 25 (describing an attorney-mom and her working spouse's reliance on nannies while raising their three daughters).

⁸⁰ *Legal Careers of Parents*, *supra* note 38, at 21 (in a survey of over 8,000 attorneys, 63% have children, 87% have a spouse, and only 1% have a live-in nanny).

⁸¹ See *supra* note 68 and accompanying text.

⁸² See, e.g., MURPHY BROWN, *supra* note 79, 163-70 (telling the story of attorney Vy Nguyen who explains how she has navigated being a single mom through prioritizing her son, selecting new work environments through the years, and relying upon a strong support network of family); STILLER RIKLEEN, *supra* note 61, at 123-24 (describing the struggle of a single mother to bill 2,200 in a year with little support).

termed being on the “mommy-track.”⁸³ Colleagues make assumptions and comments about lawyer-moms’ commitment, work ethic, and likelihood to stay at the firm.⁸⁴ Attorney-moms are provided fewer opportunities, fewer sponsors within the firm, and less respect.⁸⁵ Partners express disappointment in the new mom’s absence from the office after childbirth—even as she works at home and meets her billable requirements.⁸⁶ This treatment is not exclusive to associates. Many lawyer-moms who are partners in traditional firms eventually leave because they are so exhausted from being treated as second-class citizens.⁸⁷

One attorney who is a partner in a large firm explains the difficulty of surviving in a firm dominated by men with SAHSS. She says:

It's a horrible thing to work so damn hard . . . and still have men question my commitment because I have family

⁸³ HORN EPSTEIN, *supra* note 69, at 335 (quoting a female partner in a large firm who explains that she is perceived as being on “mommy-track” since having two kids); Triedman, *supra* note 23 (explaining that there is a stigma around reducing your hours, such that many young women would rather leave the firm than deal with the “mommy-track” stigma); Conway-Hatcher, *supra* note 69 (while the author was pregnant and seeking advice, female partners told her, “Never show you are struggling or go part-time. You’ll get paid less, work just as hard, and find yourself on another track.”).

⁸⁴ Brittany Johnson, *Law Firms Must Normalize Working Parenthood to Retain Talent*, U.S. LAW WEEK (June 1, 2023) (describing the incorrect assumptions made about her interest in stretch assignments and travel when she returned after having a baby). In another example, in the ABA’s study of over 8,000 lawyers, 61% of attorney-moms experienced demeaning comments at work about being a parent and 60% felt they were perceived as being less committed to their careers. *Legal Careers of Parents*, *supra* note 38, at 6.

⁸⁵ See, e.g., Darbyshire & Thompson, *supra* note 26, (quoting a chair of a large law firm as saying that partners building a team to work on a matter may exclude mothers based on assumptions that they may not want to deal with travel or a demanding client); Amy Cabbage, *What Do You Do When You Become the Statistic You Desperately Hoped to Avoid?*, www.abovethelaw.com (May 7, 2019) (explaining that as a young partner in a large firm without a large book of business, motherhood—and the perception she was often at doctor and therapy appointments—resulted in less work referred by firm partners and a nosedive in her compensation even though she was working the same number of hours).

⁸⁶ Sarah Mannion, *Practicing & Motherhood—What Has Changed, What Hasn’t and What Needs To*, ABA LAW PRACTICE DAILY (Nov. 15, 2023).

⁸⁷ See, e.g., Ayanna Alexander, *Women Who Left Big Law Equity Hunt Stake Ground on LinkedIn*, News.Bloomberglaw.com (Feb. 23, 2022) (quoting Kelly Keller who left a firm before partnership to avoid getting “mommy-tracked” which she described as meaning “the minute you had a baby you were never going to be able to compete for equity partner . . . and participate in the same structures as the guys who didn’t give birth.”); Cabbage, *supra* note 85 (describing declining compensation and work referrals when she became a mother while a partner at a large firm).

obligations. . . . My bottom line after dealing with this nonsense for so long: Men have simply found a new and improved way to discriminate. They don't do it overtly; they do it indirectly—by creating an environment in which only a few like me can hang in there and get anywhere in the hierarchy. But I had to nearly kill myself to be partner in this firm. . . .⁸⁸

It should be apparent that for women the challenges of working in such firms are both structural and cultural—with a structure that requires a tool most women do not have and a culture that disrespects lawyer-moms.⁸⁹ It is exceedingly difficult for talented and smart women to thrive within this system, so many make the sensible choice—indeed, the brave choice—to leave.⁹⁰

B. Empirical Evidence of Traditional Firms and their Impact on Women

As discussed at length in the prior Sub-part, there is substantial anecdotal evidence that the traditional firm model is prevalent and is the reason women are underrepresented in U.S. law firms.⁹¹ But what about empirical evidence? While a number of national surveys and reports have attempted to determine women's progress and barriers in law firms, these national studies have not studied the extent of firm reliance on SAHSs and how that reliance impacts the careers of female lawyers.⁹²

The most significant (and perhaps only) effort to gather and analyze data on lawyers' spouses and the impact on women's legal careers is the 2007 MIT report *Women Lawyers and Obstacles to Leadership* (“2007 MIT Report”).⁹³ The report was prepared by the MIT Workplace Center at the

⁸⁸ HORN EPSTEIN, *supra* note 69, at 335.

⁸⁹ See *infra* notes 191-196 and accompanying text for discussion of how modernizing the traditional firm has broad implications, not only making it possible for parent-attorneys to work without a SAHS (structural) but also making the workplace more diverse and with less discrimination against mothers (cultural).

⁹⁰ Paula Schaefer, *On Balance: Leading by Leaving*, 83 TENN. L. REV. 931, 943 (2016) (“[A]n over-achiever [who] leave[s] the money and prestige of practicing law at a large firm in order to obtain balance and fulfillment. . . demonstrates leadership.”).

⁹¹ See *supra* Sub-Part I.A. Traditional Firms, Attorney-Parents.

⁹² See, e.g., *supra* notes 8-21 and 29-41 and accompanying text.

⁹³ Mona Harrington & Helen His, *Women Lawyers and Obstacles to Leadership A Report of the MIT Workplace Center Surveys on Comparative Career Decisions and Attrition Rates of Women and Men in Massachusetts Law Firms* (Spring 2007) [“2007 MIT Report”].

invitation of several bar associations.⁹⁴ It is based in part⁹⁵ on MIT's *Career Decisions in the Practice of Law Survey* which gathered detailed information about Massachusetts attorneys' spouses, children, and career paths in the state's largest law firms.⁹⁶

The survey was completed by 971 lawyers—with roughly even numbers of men (449) and women (432) participating.⁹⁷ The survey asked if participants were currently (as of 2005) an associate, non-equity partner, equity partner, staff attorney or of counsel, or none of these (because they were no longer at a firm).⁹⁸ As of 2005, the number of women was roughly equal to men at the associate rank (116 women and 115 men), but women made up a smaller percentage at each higher rank, with 62 female non-equity partners (compared to 80 male equity partners) and 81 female equity partners (compared 146 male equity partners).⁹⁹

The survey asked attorneys if they were married and if they had children.¹⁰⁰ At the rank of associate, among women: 75% were married and 56% had children; among men: 92% were married and 72% had children.¹⁰¹ At the next rank of non-equity partner, among women, 92% were married and 73% had children; among men: 93% were married and 85% had children.¹⁰² Finally, at the rank of equity partner, among women: 91% were married and 68% had children; among men, 94% were married and 91% had children.¹⁰³ The data in the report does not include the percentage of lawyers in each category who were both married and had children.¹⁰⁴

With the goal of determining how men with families are able to stay in law firms at much higher rates than women, the Career Decisions Survey

⁹⁴ *Id.* at 3. The Women's Bar Association of Massachusetts, the Women's Bar Foundation, the Boston Bar Association, and Massachusetts Bar Association created the Equality Commission. Its focus was addressing the lack of women in leadership in law firms. To that end, the commission asked the MIT Workplace Center to conduct in-depth studies on men's and women's career paths in Massachusetts firms. *Id.*

⁹⁵ Another survey conducted by MIT and addressed in the report is titled *Rates of Attrition in Massachusetts Law Firms*. *Id.* at 3-4.

⁹⁶ *Id.* at 6. The survey instrument was distributed in 2005 to 2,755 attorneys who were at the 100 largest Massachusetts law firms as of 2001. *Id.*

⁹⁷ *Id.* at 6-7.

⁹⁸ *Id.* at 10-11, 17.

⁹⁹ *Id.* at 17.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

asked two questions.¹⁰⁵ First, the lawyers were asked if they contribute 80-100% of the household income.¹⁰⁶ For men, 78% of equity partners, 78% of non-equity partners, and 55% of associates answered in the affirmative.¹⁰⁷ For women, 38% of equity partners, 30% of non-equity partners, and 44% of associates answered affirmatively.¹⁰⁸ Second, the lawyers were asked if their spouses are equally or more committed to their careers.¹⁰⁹ For men, 26% of equity partners, 19% of non-equity partners, and 34% of associates answered in the affirmative.¹¹⁰ In contrast, for women, 43% of equity partners, 59% of non-equity partners, and 68% of associates answered in the affirmative.¹¹¹

Relying on this data, the 2007 MIT Report concludes that men with families are able to stay at firms at much higher levels because “traditional division of family labor is strong among attorneys in law firms.”¹¹² The report opines that male and female attorneys face vastly different family pressures because most male lawyers have spouses who have “little or no financial responsibility” for the family and “are able to assume responsibility for family care,” while most female lawyers have spouses with an equal or greater commitment to their careers, such that “both partners have severe time constraints.”¹¹³

The 2007 MIT Report is an important step in quantifying the prevalence of traditional firms in the U.S. and their impact on the careers of women lawyers. Reviewing the data, we see the high percentage of female associates whose spouses have careers that they are highly committed to, but the percentage drops at non-equity and equity partnership levels as the

¹⁰⁵ *Id.* at 16.

¹⁰⁶ *Id.* at 17.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* at 16. In support, the Report notes that twice as many men as women contribute 80-100% of household income and more than twice as many men as women described their spouses as less committed to their own work. *Id.* It should be noted, though, that the male attorneys’ households may have a “traditional” division of labor (if that means that the man is the breadwinner and the woman is the caregiver), but the female attorneys’ households do *not* have a traditional division of labor (because both spouses are working and providing caregiving—even if the mom does more of the childcare than the dad).

¹¹³ *Id.* at 5.

number of women at firms also drops.¹¹⁴ Women are leaving traditional firms not because they are sole or majority caregivers, but because it takes the contribution of two parents to make caregiving work in a dual-career family, thus, a mother needs a job where she can meet workplace expectations while sharing caregiving with her spouse. Because the traditional firm's expectation is that its lawyers will contribute 0% to caregiving, that creates a nearly impossible situation for female (or male) lawyers in dual-career families.

A negative critique of the MIT methodology is that the questions about percent of earnings and commitment to career do not meaningfully distinguish between spouses with full-time jobs and those who are SAHSs. For example, a SAHS provides 0-20% of household income, but so does a spouse with a full-time career who makes \$100,000 annually when the attorney-spouse earns a \$400,000 salary. Using the same example, both lawyer-spouses answering the survey may view (his) SAHS and (her) spouse who earns a \$100,000 salary as having a "lesser commitment to career."¹¹⁵ But a SAHS undoubtedly makes a substantially greater contribution to caregiving than the spouse with a full-time job making a \$100,000 salary. A full discussion of an alternative survey methodology and an invitation for associations, firms, and attorneys to gather this data is discussed in Part V.¹¹⁶

C. Confusion and Harm Caused by Framing the Problem as Lawyer-Moms Being their Children's Primary Caregivers

Understanding traditional firms illuminates the irrelevance of the fact that more female than male lawyer-parents are primary caregivers.¹¹⁷ Even

¹¹⁴ See *supra* notes 99 and 111 and accompanying text. As addressed in the next paragraph of the Article, the question regarding the spouse's level of career commitment is problematic (and likely results in underreporting) because it does not capture spouses with full-time careers that the attorneys may perceive as "less committed."

¹¹⁵ See, e.g., Mary Beth Ferrante, *How this Lawyer and New Mom Managed Her Baby and Promotion to Partner*, Forbes.com (Oct. 1, 2018) (though the lawyer-mom featured in this story describes herself as "the breadwinner of the family," she later explains that her husband works full-time as an emergency room nurse and shares housework and childcare 50-50). This attorney-mom might answer a survey by describing her spouse as making under 20% of household income and having a lesser commitment to his career, but he also does not have the same amount of time as a SAHS to contribute to caregiving.

¹¹⁶ See *infra* Part V. Assessing Firm Reliance on SAHSs.

¹¹⁷ See *supra* notes and accompanying text (describing the reports and commentators who cite the fact that women are primary, majority, or sole caregivers as the reason women

if a lawyer-mom does 60-70% of the childcare (making her the “primary” caregiver), her ability to keep up the billing pace in a traditional firm¹¹⁸ will not change much if her spouse kicks in another 10-20% to the overall of effort. The additional spousal effort would mean the lawyer-mom would no longer be the “primary” or “majority” caregiver at her house, but it still would not put her on equal footing at her firm. Contrary to Sheryl Sandberg’s assertion that it is key for a woman to ask her partner to be a real partner,¹¹⁹ in this case, the solution is not so simple.

The lawyer-mom’s challenge in the traditional firm is not her spouse’s equal effort to her own, but the absence of caregiving performed by her colleagues. When the vast majority of her colleagues’ SAHSs contribute close to 100% of the caregiving effort, lawyer-moms cannot keep up the pace—which *is* the traditional firm standard.¹²⁰ This is true regardless of whether the lawyer-moms are doing 70%, 50%, or 30% of the caregiving in their homes.¹²¹

Lawyer-moms doing a majority of the childcare in their homes would undoubtedly welcome their working spouses contributing equally to the effort.¹²² A fair division of caregiving within the marriage would ease the lawyer-mom’s burdens. But note well that fixing that marital unfairness would not propel women to success in traditional firms, because they would still be compared to their male colleagues who do not contribute equally to caregiving. It is ironic that traditional firms claim to care about fair division

are underrepresented in law firms).

¹¹⁸ 2007 MIT Report, *supra* note 93, at 15 (reporting data reflecting that male attorneys with children bill substantially more than female attorneys with children).

¹¹⁹ SANDBERG, *supra* note 44, at 104 (explaining that a woman asking her partner to be a real partner is part of “leaning in” necessary for women to succeed in the workplace). *But see* COX, *supra* note 56, at 162 (describing Michelle Obama as providing a blow to Sheryl Sandberg’s “Lean In movement” when she explained to a sold-out audience at the Barclays Center, “It’s not always enough to lean in. Because that shit doesn’t work all the time.”).

¹²⁰ Rubin Gomez, *supra* note 58, at 928 (the author explains that she left an AmLaw50 firm after making partner, despite reduced hour policies and robust maternity leave, because “my success still would have been measured in sixth-of-an-hour increments. My competition within the firm would have been against lawyers without prominent roles at home. And given that time is finite, it just did not seem possible to have it all.”).

¹²¹ It seems ridiculous to have to spell this out but given all the confusion, it should be noted that 30% is more than 0%, 50% is more than 0% and 70% is more than 0%.

¹²² *See, e.g., Legal Careers of Parents, supra* note 38, at 37 (quoting women who say they wish their spouses contributed equally to caregiving). The sentiment is even a central plotline in a recent novel about an overworked lawyer-mom and her working spouse. CHANDLER BAKER, *THE HUSBANDS* (Flatiron Books 2021).

of caregiving in a marriage, because if male attorneys contributed equally to caregiving, the traditional firm model would collapse.¹²³ The focus on marital unfairness is an attempt to confuse the real issue: a lawyer needs a SAHS to meet the expectations of a traditional firm.

The ABA has contributed to the confusion by repeatedly focusing on the fact that female lawyers are more likely than male lawyers to be “sole” providers for certain caregiving tasks.¹²⁴ Using the ABA’s 2023 survey of 8,000 lawyers as an example, it should first be noted that for most surveyed tasks, the majority of women do not report they are the sole caregiver.¹²⁵ Further, even when women are the sole caregiver, having a spouse do more—as discussed above—would not change the lawyer-moms’ ability to keep up with the male lawyers who have SAHSs. Further confusing the issue, *Legal Careers of Parents* reports that most surveyed lawyer-dads say they “share” parenting tasks with their spouses.¹²⁶ But the survey instrument did not ask *how much effort* they contribute.¹²⁷ In answering the ABA’s questionnaire, grilling one day a month is a dad sharing “family meal preparation” or occasionally washing a load of laundry is helping with “other household duties.” The ABA’s take-away from this survey—with so many missing and misleading pieces of data—is that women need to get some more help from their husbands and maybe firms should provide better childcare.¹²⁸

It is inexcusable that we have allowed this moms-as-primary-caregivers frame to obfuscate the real issue for so long. Researchers and organizations that claim to care about progress of women in the profession need to change their approach. A relevant lawyer survey question might be, “What

¹²³ Undoubtedly, some readers are about to object that marital fairness is the issue. They might argue that an attorney with a SAHS does not need to share equally in caregiving because that is the SAHS’s sole job and the attorney’s sole job is to be the breadwinner. Even if that is true—which is questionable—that is beside the point. Traditional firm leaders either know or are willfully ignorant of the fact that a successful attorney in the firm does not have time to share equally in caregiving.

¹²⁴ See *supra* notes 29-47 and accompanying text.

¹²⁵ *Legal Careers of Parents*, *supra* note 38, at 31-36.

¹²⁶ *Id.* Of men surveyed, the following percentage report sharing parenting tasks with their spouse: arranging childcare (59%); leaving work to care for children’s needs (63%); looking after children in the evening (86%); helping children with homework (72%); arranging medical care (42%); attending extracurricular events (85%); cooking for the family (50%); and caring for other household responsibilities (82%). *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.* at 139-40.

percentage of effort do you provide to the overall care for yourself, your family, and running your home?” Focusing on percentage of effort would allow a more meaningful comparison of the burdens of male and female lawyer-parents.

However, percentage of effort is subjective and difficult to estimate, making the answer unreliable.¹²⁹ Thus, it would be better not to ask for lawyer perceptions, but instead to capture caregiving effort in a more objective way. As noted earlier, this Article proposes a methodology in Part V.¹³⁰ Correctly framing the issue will reveal that women having an equal partner at home will not move the needle. Instead, traditional firms need to focus efforts on partnership pathways for attorneys without SAHSs.

D. Women Are Not Leaving the Workforce When They Leave Traditional Firms

Women who leave traditional firms typically are not leaving the workforce.¹³¹ This is inconsistent with an assumption made by many adherents to the motherhood myth: that firms cannot compete against the pull of child-rearing.¹³² Thus, understanding that most women remain employed after leaving traditional firms is important in dispelling the motherhood myth. And more importantly, understanding the characteristics of the new workplaces that draw women away further elucidates the problems baked into traditional firms.

Backing up a step, it is helpful to first reflect upon the efforts that traditional firms half-heartedly make to stem the lawyer-mom exodus—and why those efforts are unsuccessful. Many traditional firms have offered lawyer-moms part-time work options that lower billing expectations, but that typically also remove the possibility of partnership.¹³³ Women report

¹²⁹ There is reason to doubt that the percentage of effort could be correctly estimated. See, e.g., Conway-Hatcher, *supra* note 69 (discussing a partner with a SAHS telling a lawyer-mom that he understands her challenges because he helps around the house).

¹³⁰ See *infra* Part V. Assessing Firm Reliance on SAHSs

¹³¹ *Legal Careers of Parents*, *supra* note 38, at 103 (“While none of the focus group participants left the legal profession because of caregiving responsibilities, numerous participants changed sectors or employers because of caregiving responsibilities.”); 2007 MIT Report, *supra* note 93, at 10 (just 22% of women who left large firms listed themselves as unemployed).

¹³² See, e.g., *supra* notes 23-25 and accompanying text.

¹³³ EPSTEIN HORN, *supra* note 69, at 44 (“[P]art time work in a large firm is a 40-hour

stigma and accompanying poor treatment associated with such part-time roles.¹³⁴ Among other issues, they are frustrated by being asked to work on mundane tasks rather than the challenging and interesting client matters they handled before having kids.¹³⁵ As a result, women attorneys have not found part-time options attractive.¹³⁶

But this disrespectful treatment is not reserved for lawyer-moms working part-time schedules.¹³⁷ Fulltime attorney-moms also report that their commitment is questioned.¹³⁸ They are expected to do the firm “housework.”¹³⁹ They are treated unfairly when calculating origination credit and the value of their books of business.¹⁴⁰ Their colleagues often assume they will leave, which is a self-fulfilling prophecy because the

workweek . . . without opportunity for career advancement.”); *Parenting and BigLaw*, Chambers Associate, available at <https://www.chambers-associate.com/where-to-start/commercial-awareness/parenting-and-biglaw> (noting that part-time and flexible working arrangements typically mean leaving behind partnership track, “high-level” work, and money).

¹³⁴ *Walking Out the Door*, *supra* note 30, at 12 (explaining that part-time options are not attractive to attorneys because they sideline career advancement); Joan C. Williams, et. al, *Disruptive Innovation: New Models of Legal Practice*, 67 HASTING L. J. 1, 6(2015) (describing stigma of being viewed as less committed associated with part-time roles); Cynthia T. Calvert, et. al, *Reduced Hours, Full Success: Part-Time Partners in U.S. Law Firms*, 1 (2015), <https://worklifelaw.org/publications/part-timepartner.pdf>, (part-time lawyers who felt stigmatized reported unfair compensation policies, attitudes that were hostile to part-time work, firm policies that refuse to allow part-time partners to attain equity status, and doubts about their commitment).

¹³⁵ Joan C. Williams, *supra* note 134, at 6 (part-time lawyers report that find the “quality of their work assignments plummet from plum to strictly routine.”).

¹³⁶ Carol J. Williams, *supra* note 61, at B-1 (explaining that part-time stigma in law firms results in a comparatively small number of women working part-time in law in 2008 (5%) to the number of women working part-time in medicine, accounting, consulting, and architecture (11%-14%)).

¹³⁷ See, e.g., *Walking Out the Door*, *supra* note 30, at 7-8 (in providing survey results, the report explains that senior women in firms are significantly more likely than senior men to report experiencing demeaning comments, lack of access to business development opportunities, been denied or overlooked for promotion, been denied a salary increase or bonuses, felt treated as a token representative for diversity, experienced a lack of access to sponsors, missed out on a desirable assignment, and more). See also *supra* notes 87-88 and accompanying text.

¹³⁸ *Walking Out the Door*, *supra* note 30, at 8 (63% of women report being perceived as less committed to her career)

¹³⁹ *Id.* at 28 (describing office housework as the activities—like leading firm committees—that require lots of work without rewards).

¹⁴⁰ *Id.* 8-12 (discussing the causes of pay disparities).

treatment pushes many out the door.

When women ultimately leave traditional firms, it is for something better—but something that easily could be provided at the firms they are exiting.¹⁴¹ Three themes emerge when female lawyers explain what attracted them to a new workplace: (1) interesting, challenging, and meaningful work that draws on their knowledge and skills as they collaborate with other talented professionals;¹⁴² (2) an environment where they are treated respectfully;¹⁴³ and (3) greater time and autonomy to do things outside of work, including parenting.¹⁴⁴ Their new destinations typically involve the continued practice of law, including in boutique and other firms,¹⁴⁵ government legal offices,¹⁴⁶ corporate in-house counsel positions,¹⁴⁷ and starting their own firms.¹⁴⁸ Others enter academia or other professional settings where they are not practicing law, but can nonetheless use their knowledge and skills in a challenging and rewarding

¹⁴¹ See generally, Schaefer, *supra* note 90, at 940-44 (explaining what women seek when they leave law firms).

¹⁴² See, e.g., *In Their Own Words*, *supra* note 35, at 24-26 (describing study results revealing that women with fifteen years or more of legal experience “leave their organizations in search of more challenging and interesting work where they can utilize their skills”); Conway-Hatcher, *supra* note 69 (explaining that she left Big Law at the peak of her career to join a boutique law firm made up of lawyers “who are extraordinarily talented and highly sought after for complex legal, business, and reputational matters”).

¹⁴³ See, e.g., *In Their Own Words*, *supra* note 35, at 17 (describing the relief of working a setting in which there were women in management where she felt “appreciated and respected”) and 19 (quoting a female lawyer as saying “If I had felt like I was more respected. . . I probably would have stayed”).

¹⁴⁴ Friedman, *supra* note 23 (describing exit interviews of female lawyers as revealing that their new positions promise “more predictable schedules and a clearer path to advancement”); *In Their Own Words*, *supra* note 35, at 29-31 (describing the long hours and unpredictable schedules that women addressed by leaving firms).

¹⁴⁵ Schaefer, *supra* note 90, at 942, n.74 and accompanying text (discussing boutique firms as a destination); Conway-Hatcher, *supra* note 69 (discussing a boutique firm as the author’s destination after Big Law).

¹⁴⁶ See, e.g. 2007 MIT Report, *supra* note 93, at 10 (listing government as the destination of 9% of exiting pre-partner female lawyers).

¹⁴⁷ See, e.g., MURPHY BROWN, *supra* note 79, 65 (telling the story of attorney Anne-Marie Kennedy who moved from a firm to an in-house job doing commercial real estate work for a Fortune 500 company); 2007 MIT Report, *supra* note 93, at 12 (citing a female lawyer explaining that she became an in-house attorney because it had been difficult to find a work-family balance when she and her spouse were both attorneys in law firms).

¹⁴⁸ See, e.g., MURPHY BROWN, *supra* note 79, 145-46 (telling the story of attorney Alexandra Foote who, after having a second child, left her firm to start a law firm with another lawyer).

environment.¹⁴⁹

In contrast—and equally important—attorney-moms who report a positive experience in their firms after parenthood describe the very environment that other women are leaving their traditional firms to find. The women who are satisfied with their choice to stay at their firms after having children describe some combination of the following: enjoying their work on interesting and challenging client matters,¹⁵⁰ having supportive firm partners who treat them with respect,¹⁵¹ and flexibility to create a schedule that works for their needs—often including regularly scheduled work-from-home days and reduced hours.¹⁵² Traditional firms could easily provide such a workplace to all lawyers, but most do not. Hence, the continuing departure of women.

IV. The Modernization of Traditional Firms

The motherhood myth frames underrepresentation of women in law firms as an issue caused by women and one that firms are powerless to address. But the traditional firm counter-narrative reveals that *firms* are the problem. That problem can be fixed by any firm that is willing to change. In this context, change means modernization—such that the representation of

¹⁴⁹ Schaefer, *supra* note 90, at 942, n.72-73 and accompanying text (discussing academia as a destination); MURPHY BROWN, *supra* note 79, 145-46 (telling the story of attorney Rona Kaufman Kitchen who made the transition to legal academia).

¹⁵⁰ MURPHY BROWN, *supra* note 82, at 27-28 (describing a lawyer-mom's hope that other attorney moms will realize it is okay to "find an intellectually challenging career that is really wonderful" and that her daughters will see that "it is okay for mom to . . . do something important and great."); Ferrante, *supra* note 115 (explaining her interesting work in the firm's Private Client Group doing trusts and estates work).

¹⁵¹ MURPHY BROWN, *supra* note 82, at 21 (describing an attorney-mom's supportive managing partner who was influenced by the lack of choices available to his lawyer-wife who felt she had to leave her large law firm after children); Ferrante, *supra* note 115 (describing two senior partners who were strong advocates for her); STILLER RIKLEEN, *supra* note 61, at 353 (a senior associate that shifted to a reduced-hours schedule explains that it works because her practice leader and department have been sensitive and treated her well in terms of protecting her schedule).

¹⁵² See, e.g., Advocatus Matris, *Biglaw and Balance for Working Mothers? Yes!*, *Abovethelaw.com* (Nov. 12, 2020); Ferrante, *supra* note 115 (describing flexibility in scheduling because senior partners who did not care when or where she does her work); MURPHY BROWN, *supra* note 82, at 21-24 (describing attorney-mom's negotiations with her firm about her needs as a parent, how she organizes uninterrupted time for family, and her experience working an 85% schedule).

women in each partnership class matches that cohort's representation at the time they joined the firm as associates.¹⁵³

This Article proposes measuring modernization efforts by tracking a firm's reliance on SAHSs. In other words, the key modernization metric would be how many firm attorneys have SAHSs. A firm where attorneys can thrive without a SAHS is one that can grow its ranks of women partners and leaders. A modern firm may still have some partners and partnership-track attorneys who have SAHSs and insist on working around-the-clock—perhaps because they love the work, they love the money, or they and their spouse prefer that one spouse work and the other stay at home. But a modern firm must also boast a substantial number of partners and partnership-track attorneys who do not have SAHSs.

Modernization would allow firms to ultimately—and hopefully soon—achieve fair female representation in leadership and partnership roles. Incidentally, the change would also be good for the legal careers of men who are part of dual-career families. Furthermore, in a time when many are paying lip-service to the importance of attorney-well-being, firms becoming less reliant on SAHSs would likely result in greater well-being for all their attorneys.¹⁵⁴

It is beyond the scope of this already lengthy Article to provide a roadmap for modernization, but the discussion in Parts II and III provide important clues about the changes firms need to make to improve the structure and culture.¹⁵⁵ To create a firm where attorneys without SAHSs can thrive, firms should act boldly and consider making changes that currently seem impossible. Undoubtedly, firms need the leadership and guidance of attorney-moms who do not have SAHSs to develop and implement such plans.¹⁵⁶ Firms should also pay former firm attorneys to

¹⁵³ See *supra* Part I. By the Numbers: Women and Men in U.S. Law Schools and Law Firms for the current difference between associate ranks and partnership ranks.

¹⁵⁴ TRACI CIPRIANO, THE THRIVING LAWYER: A MULTIDIMENSIONAL MODEL OF WELL-BEING FOR A SUSTAINABLE LEGAL PROFESSION, 125 (Informa Law 2024) (citing literature supporting the proposition that people who participate fully in “work and family roles” have greater physical and psychological well-being than those who participate in only one role); Stephen E. Embry, Is the Billable Hour Impacting Our Mental Health, LAW PRACTICE TODAY, Americanbar.org (Oct. 15, 2019)(asserting that a growing number of people are recognizing the impact of the billable hour on attorney mental health).

¹⁵⁵ See *supra* Part II. Motherhood Narrative as Explanation for Underrepresentation of Women in Law Firms and Part III. Evidence of a Compelling Counter-Narrative: Traditional Firms Drive Out Women.

¹⁵⁶In *Their Own Words*, *supra* note 30, 24-26 (citing recommendation that diversity in

consult with the firm about what the firm should be doing to retain talented attorneys without SAHSs.

Whatever methods and tools a firm employs towards modernization, a fully modern firm will likely boast an equal or higher number of attorneys in the partnership ranks without SAHSs. The number may be substantially higher than one-half as the number of women entering as associates exceeds one-half of each class and as men recognize and embrace the benefits of modernization.

This Article anticipates three arguments against modernization as a viable solution to the underrepresentation of women in firms. First, proponents of the traditional firm will assert that the traditional model is necessary to meet client needs. Second, some may question why traditional firms—which do not seem particularly motivated to remedy their poor retention of women—would suddenly be motivated to reduce their reliance on SAHSs to satisfy a new metric. Third, and finally, supporters of greater representation for women may argue that even if firms modernize, this will not address the multitude of reasons women leave firms. The following discussion responds to all three objections, demonstrating that the modern firm can provide excellent client service, explaining why the SAHS metric has the potential to motivate firms, and describing how modernization is the linchpin for retaining women.

A. Firms Can Modernize While Providing Excellent Service to Clients

As a threshold matter, it is inescapable that a necessary component of eliminating reliance on SAHSs is reducing attorneys' working hours for partners and partnership-track attorneys who want the option. There are numerous ways firms could change the billable hours expectation—from the boldest (eliminating the billable hour and adopting set-fee arrangements with all firm clients)¹⁵⁷ to the more modest (allowing individual attorneys to select their billable hour target without any adverse consequence for partnership). So the question is whether an hours reduction strategy can be accomplished without harm to clients.

Regardless of the firm's hours-reduction strategy, the key to happy

leadership roles is necessary to interrupt bias in firm decision-making).

¹⁵⁷ Cohen Barbe, *supra* note 63 (asserting that a culture in which billable hours were eliminated and lawyers were required to take vacations would result in a happier workforce, happier clients, and "[firms] could still pay the proverbial rent").

clients is adequately staffing matters so that client needs are met by a team of lawyers at a cost acceptable to the client.¹⁵⁸ Before firms jump in to point out that they already use teams on client matters, the current team approach is not working if any single attorney must be constantly available to the client or constantly working on the client's matter. The team approach described here is one in which the combined work of all members of the team meets the client's needs, but does not exceed any one attorney's time commitment to the firm.

This is a system that is used in many other professional settings. For example, consider a patient who spends two weeks in the hospital. The patient needs care 24 hours a day, but that care is not provided by the same doctor and nurse for that 2-week period. While there may be a primary doctor, he or she is interchangeable with other doctors around the clock, throughout that two-week period. The same is true for the patient's nurses. The team of doctors, nurses, and other medical professionals communicate with one another and the patient to meet the patient's needs. No patient would insist that the same doctor and nurse should be available 24/7. But if they did, the team would explain the impossibility of that approach and the goals of the team approach.

Law firms have generally taken the view that such an approach is not possible.¹⁵⁹ But there is a difference between the impossible and the stubborn adherence to a that's-not-how-we-do-things-here mindset. If firms acknowledge that attorneys should have time away from work, they should facilitate that by staffing matters in a way that makes no attorney indispensable to the effort.¹⁶⁰ That might mean two lead partners and two or three associates with similar expertise will handle a case that might have otherwise been staffed with a partner and an associate.¹⁶¹ This will allow

¹⁵⁸ *Id.* (discussing the benefits of using new staffing models). While Cohen Barbe's focus was changes that would help improve mental health and wellness for lawyers, these are the same changes that would reduce time demands such that lawyers could do the job without the help of a SAHS.

¹⁵⁹ *See, e.g., supra* note 51-54 and accompanying text (describing a firm's rejection of an associate's request to reduce her work hours, calling such a change "incompatible with client needs" and "impossible").

¹⁶⁰ Cohen Barbe, *supra* note 63 (explaining the advantages of a team-based staffing approach).

¹⁶¹ *Id.* (suggesting that firms should make teamwork the goal—moving away from a single partner controlling a large book of business—and should take concrete steps to incentivize a team approach, such as paying a bonus for work shared among multiple partners).

the interchangeable team members to collaborate with one another and also step in for one another when the other is not available.

Communication with the client will be key to this approach working.¹⁶² Firms will need to explain the reasons for the staffing model, and assure clients that excellent representation—at no additional cost—is the goal. First, the explanation for the approach is important to gain client buy-in. If clients understand the objective of greater gender diversity at the firm and less attrition, most clients will be enthusiastic about this. It is also important that clients understand that the lawyers on the team have boundaries for their availability, but that someone on the team will always be available to the client. Second, attorneys must assure clients—and then demonstrate to them—that a big-team approach will provide the high level of service the client expects without costing more. Attorneys should explain that the client will likely receive an even higher level of service because of the additional bright minds providing input on the matter.

When clients are educated about the purpose and advantages of this approach, they will come to appreciate that that multiple attorneys—and not just a key attorney or two—can respond to any client question or emergency.¹⁶³ They will also enjoy the benefits of less attrition of attorneys they have come to rely upon.¹⁶⁴ With clients on board, attorneys can have uninterrupted time away from the office, including time for day-to-day activities, as well as mandatory vacations.¹⁶⁵ This approach would likely result in greater institutionalization of firm clients, which is beneficial for clients and firms.¹⁶⁶ Clients will also benefit from the greater gender diversity resulting from modernization, including retaining their trusted advisors through the years and benefiting from women in leadership roles

¹⁶² STILLER RIKLEEN, *supra* note 61, at 357 (explaining that direct communication with clients is key to getting client buy-in for an attorney on the client’s team moving to a part-time schedule).

¹⁶³ Cohen Barbe, *supra* note 63 (explaining that boundaries will be respected when clients are educated that “there is an entire team positioned and capable of handling their concerns”).

¹⁶⁴ See *infra* note 177 and accompanying text.

¹⁶⁵ Cohen Barbe, (discussing the reasons large financial institutions require two-week vacations, including reducing the risk of fraud (by having someone else review the books), demonstrating no one is indispensable, and acclimating the institution to the absence of key employees).

¹⁶⁶ *Id.* (describing the institutionalization of firm clients that would result from a new model).

in their cases and deals.¹⁶⁷ The traditional firms that make a significant move toward modernity will likely find that clients embrace that evolution, with old clients championing the change and new clients hiring the firm because of its client service, attorney longevity, and enhanced diversity.

Despite protestations to the contrary, the traditional law firm's work-around-the-clock culture is not rooted in client needs. The constant availability ethic is the product of a desire for high profits¹⁶⁸ and a tradition of lawyers who have always worked that way.¹⁶⁹ The fact that some attorneys—and their SAHSs—are willing to accept an outdated model does not make it necessary. Only when firms acknowledge a better model is possible will women will begin to gain parity in traditional firms.¹⁷⁰

B. The SAHS Metric Has the Potential to Motivate Firms to Change

Law firms have stated for many years they want to improve the retention of women.¹⁷¹ If we take firms at their word and believe they are acting in good faith, then they are likely frustrated that their prior efforts have not yielded results. The lack of results just reaffirms the motherhood narrative, reinforcing for firms that any impactful changes must be made by moms. Providing firms a new metric for measuring progress—their reliance on SAHSs—could be a game changer. If focus on that the new metric begins

¹⁶⁷ *Walking Out the Door*, *supra* note 30, at i.

¹⁶⁸ Cohen Barbe, *supra* note 63 (describing the role of profits in the current large firm model and how that would likely change in a new model); Chen, *Female Expats*, *supra* note 69 (quoting a former big law attorney who explains “The mindset is that if we’re not increasing our [profits per equity partner], we’re not a premier firm and in a state of decline.”).

¹⁶⁹ See, e.g., Kate Ahern, *How You Can Avoid Burnout (Until We Change the Legal Profession)*, LAW PRACTICE TODAY, Americanbar.org (July 2023) (“Young lawyers feel they must choose between a draining, traditional practice, or a fulfilling, balanced life, assuming the two to be mutually exclusive. Unfortunately, they are not misunderstanding the current state of our profession.”).

¹⁷⁰ Deborah L. Rhode, *Gender and Professional Roles*, 63 *FORDHAM L. REV.* 39, 64 (1994) (“Gender hierarchies will persist until concerns about quality of life become more central professional priorities.”); *Walking Out the Door*, *supra* note 30, at 18 (“Senior women leave their firms because of the inordinate demands imposed by firm policies—especially onerous billable hours requirements and the emphasis on marketing.”).

¹⁷¹ After noting the lack of improvement in the retention of women in the 15 years that NAWL had collected data, the NAWL called firms out on a lack of commitment to change. 2021 NAWL Report, *supra* note 8, at 4.

yielding positive results, that could be very motivating for firms.

Firm diversity officers and other firm DEI professionals may have the greatest influence in getting the ball rolling.¹⁷² These professionals are tasked with improving firm diversity and often feel frustrated by the lack of progress.¹⁷³ These are also the people that are tasked with the exhausting and seemingly pointless task of gathering data to respond to the current surveys about diversity in the profession.¹⁷⁴ As one diversity professional said in a NAWL focus group, “Personally, I will fill out the surveys [until] my last day on earth, but when it is a survey just gathering data and you do not see any impact from it—that’s when it’s hard.”¹⁷⁵ Hopefully, diversity professionals will be encouraged by the belief that SAHS data will actually help firms move the needle such that they will be advocates of gathering it, analyzing it, and utilizing it to fashion changes that will improve the number.

Corporate clients that care about diversity of their attorneys will likely also influence firms to care about the SAHS metric.¹⁷⁶ They can play a role in encouraging firms to reduce their SAHS reliance in order to improve their retention of women—particularly the women who work on their legal matters.¹⁷⁷ As one in-house attorney explained regarding the change they would like to see in law firm diversity, “The old model is not working. And let’s just hope that it implodes and that there’s this new, fresh thinking on how law firms can be structured.”¹⁷⁸ Just like firm diversity professionals, client general counsels can become advocates for focusing on this metric.

Finally, as firms recruit new attorneys and attempt to retain current

¹⁷² Of course, it is essential that law firm DEI professionals are supported by firm leadership. See, e.g., Dera Cassens Weiss, *BigLaw DEI Leader Encountered Bias After Standing Up to ‘Nearly All-White Firm,’ Bias Suit Alleges*, ABAjournal.com (July 8, 2024)(law firm DEI officer alleges in a lawsuit against her former employer that she was prevented from doing her job, including among other things, being stopped from distributing a survey to gather experiences of lawyers who recently took parental leave).

¹⁷³ 2022 NAWL Report, *supra* note 21, at 2-3. One DEI focus group participant explained, “There is a culture of what I call box-checking or performative actions that make it look like we’re . . . doing a lot of things, but not much is actually happening on needle moving.”

¹⁷⁴ *Id.* at 3.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 4; STILLER RIKLEEN, *supra* note 61, at 385 (describing the influence that corporate clients can have on women reaching partnership ranks in their law firms).

¹⁷⁷ STILLER RIKLEEN, *supra* note 61, at 351-91 (explaining that clients know the negative impact of attorney attrition—including the costs of training and building relationships—and appreciate reduced-hour programs that will retain attorneys).

¹⁷⁸ 2022 NAWL Report, *supra* note 21, at 4.

attorneys, those attorneys' interest in the metric may also motivate firms to care about their dependency on SAHSs. As discussed below, male and female attorneys alike should pursue a firm's SAHS data as a tool for deciding their prospects for success at the firm.¹⁷⁹ Once the subject of SAHS reliance is openly discussed in job interviews and internally within the firm, it will become difficult for firms to ignore.

C. Modernization of Firms is the Linchpin for Retention and Promotion of Women

Those who care about greater representation of women in firms may have another criticism of this Article's thesis. Even if firms are motivated to reduce reliance on SAHSs, is that really a panacea for retaining women? After all, numerous studies¹⁸⁰ and articles¹⁸¹ have highlighted a myriad of reasons women identify as causing them to leave firms. For example, the ABA report *In Their Own Words* outlined the primary reasons experienced women (with fifteen years or more of practice) cite for leaving their firms.¹⁸² The most frequently cited reasons were: pay disparities;¹⁸³ a hypercompetitive workplace lacking collegiality;¹⁸⁴ isolation caused by, among other things, a lack of diversity in firm leadership;¹⁸⁵ sexist and racist behavior;¹⁸⁶ the opportunity for challenging or fulfilling work elsewhere;¹⁸⁷ being passed over for promotion;¹⁸⁸ and long and unpredictable hours.¹⁸⁹ *In*

¹⁷⁹ See *infra* Subpart V.C. Firm Attorneys (as Well as Applicants to Firms) Should Gather Firm SAHS-Reliance Data as a Tool for Decision-Making, Advocacy, and Change.

¹⁸⁰ For example, the ABA points to its 2019 and 2020 reports as finding that "there is no one reason why women are leaving the profession." Lee Refo, *supra* note 22.

¹⁸¹ See, e.g., Vivia Chen, *Will We See Big Law Gender Parity in 20 Years? Dream On*, Bloomberglaw.com (May 31, 2022).

¹⁸² *In Their Own Words*, *supra* note 35, at 8.

¹⁸³ *Id.* at 8-12 (describing the multiple ways that women are disadvantaged by how origination credit is given with explanations "rife with gender bias").

¹⁸⁴ *Id.* at 13-14.

¹⁸⁵ *Id.* at 15-18. One woman said that no one at the firm in a position of power "can personally relate" to her; another explained "all the folks who are equity partners have stay-at-home wives," and do not understand her interest in being involved in her child's life; yet another said she had a sense of relief when she took an in-house position where there were women in management who made her feel appreciated and respected.

¹⁸⁶ *Id.* at 19-23.

¹⁸⁷ *Id.* at 24-26.

¹⁸⁸ *Id.* at 26-28.

¹⁸⁹ *Id.* at 29-30. Moms who stayed at firms credited their longevity to "Mr. Mom"

Their Own Words opened its recommendations section by saying, “[W]e conclude that it is not a single factor that pushes women to consider leaving the practice of law. Instead, it is the accumulation of a number of factors. . . .”¹⁹⁰

Given this variety-pack of challenges, some may be skeptical that reforming traditional firms into ones less reliant on SAHSs will result in the retention of women. But there is every reason to believe firm modernization is key. This is because the traditional firm creates both a structure and a culture that is hostile to attorney-moms, leading to the granular issues noted above—*i.e.*, pay disparities, isolation, discrimination, long hours, etc.

Structurally, the time demands are incredibly difficult for an attorney-mom on the partnership track to meet unless she has a SAHS.¹⁹¹ While a firm could ensure that transitioning to part-time work would not remove an attorney from partnership consideration,¹⁹² most firms make no such promise. Part-time work at traditional firms still comes with stigma and lost opportunity for advancement. Further, the necessity of a SAHS for success means that the firm’s equity partners and leadership will be primarily or exclusively men with SAHSs. Thus, attorney-moms’ perspectives are absent.

This structure has a direct impact on firm culture. The men who run traditional firms have their every need met by SAHSs, all while gaslighting female attorneys at the office—telling them that motherhood is what is holding them back.¹⁹³ Firm lawyers sometimes express their biases against lawyer-moms aloud, such as when they openly describe lawyers as being on

spouses or to their (the moms’) ability to work flexible schedules.

¹⁹⁰ *Id.* at 32.

¹⁹¹ See *supra* Subpart Traditional Firms, Attorney-Parents, and the Disproportionate Impact on Women.

¹⁹² *Walking Out the Door*, *supra* note 30, at 20.

¹⁹³ Why they do this could be a subject of its own article. Some men may view women’s appropriate societal role as “helpmate,” so they do not view women as their equals in the workplace. Others may feel their own family structure or their power threatened by women succeeding in their workplace. See *generally* STILLER RIKLEEN, *supra* note 61, at 124 (“How could male colleagues be supportive of [women’s] decision to work while raising a family, without, in effect, rejecting the choices their own families had made?”); *Walking Out the Door*, *supra* note 30, at 13 (asserting that biases in favor of traditional gender roles are believed by some lawyers to impede the advancement of experienced women lawyers); JULIE C. SUK, *AFTER MISOGYNY*, 10, 60 (University of California Press 2023) (describing misogyny as “the social, not legal, punishment of women who depart from their role in the patriarchal script” and introducing a reconceptualization of misogyny as “gender-based injustice imposed upon through women” through core elements of overentitlement and overempowerment).

“mommy-track.”¹⁹⁴ Other times, biases against women play out silently, and perhaps without conscious thought, through opaque and secretive firm processes—like setting compensation, evaluating performance, and planning for succession—that favor men over women.¹⁹⁵ The culture is evidenced by female attorneys’ experiences of being the subject of demeaning comments (75% of women vs. 8% of men), being denied access to business development opportunities (67% of women vs. 10% of men), and other forms of mistreatment.¹⁹⁶

It is easy to trace the multitude of reasons women leave to the traditional firm and the men who control it. Take pay disparities for example. *In Their Own Words* pointed to pay disparities as the most frequently cited reason for women to leave their firms after fifteen or more years of practice.¹⁹⁷ These attorneys explain that the disparities often lie in the unfair ways that origination credit is allocated, with firms providing explanations that are “rife with gender bias.”¹⁹⁸ One female attorney reports that when she questioned why a fellow partner made \$75,000 more per year even though he had lower originations than she did, the explanation included “he has two kids and he has a family to take care of.”¹⁹⁹ Similarly, another female partner left after she discovered a male associate was being paid \$80,000 more per year and the firm explained the reason was that he has a SAHS and kids to support.²⁰⁰

A female equity partner who was working reduced hours after having kids was given a benchmark for compensation that was triple the receipts required of her male peers.²⁰¹ A female partner who had lateralled to a firm to take over a retiring male partner’s book of business learned that she was paid one-third of what the retired male partner had made.²⁰² The firm’s explanation was that the retired partner had been overcompensated.²⁰³ A female partner who built a million dollar book of business in a new practice

¹⁹⁴ See *supra* note 83 and accompanying text.

¹⁹⁵ 2022 NAWL Report, *supra* note 21, at 6-9 (discussing bias at work in opaque compensation, performance evaluation and promotion, and succession planning decisions at law firms).

¹⁹⁶ *Walking Out the Door*, *supra* note 30, at 7-8.

¹⁹⁷ *In Their Own Words*, *supra* note 35, at 7-8.

¹⁹⁸ *Id.* at 9.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.* at 10.

²⁰³ *Id.*

area received no origination credit; it instead went to a male senior partner who had passed the original matter to her.²⁰⁴ When she complained, he said, “My God, we just really didn’t think you’d care that much about the money.”²⁰⁵ Another female attorney tells a story of a client requesting that she take the place of a male partner on a matter—otherwise the client would fire the firm.²⁰⁶ The matter resolved successfully under the woman’s leadership, and the male partner (whom the client had fired) received all of the origination credit.²⁰⁷ In all of these stories, we see the culture of the male-dominated traditional firm. That type of firm only views the rights and needs of attorneys through the male breadwinner lens.

For too long, solutions to the underrepresentation of women have been framed in terms of fixing the individual reasons women leave. Firms have required anti-bias training, adopted part-time and work-from-home policies, and formed “women’s initiatives.”²⁰⁸ Commentators have proposed a variety of solutions, from mentoring programs to asking firms to “own[] the business case for diversity.”²⁰⁹ Others have suggested “toolkits,” including things like feedback training, bias training, creating mentoring programs, addressing childcare needs, and more.²¹⁰

²⁰⁴ *Id.* at 11.

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 12.

²⁰⁷ *Id.*

²⁰⁸ Friedman, *supra* note 23 (describing women’s initiatives, anti-bias training, and networking events as efforts that have mostly failed); Vivia Chen, *Big Law Gender Bias Policies Net Women Paltry Gains* [“Paltry Gains”], Bloomberglaw.com (May 11, 2022) (describing NAWL suggestions to law firms as including vigorously analyzing compensation data and providing more feedback to women about what it takes to achieve partnership); *Walking Out the Door*, *supra* note 30, at 16 (describing policies used by the vast majority of large firms that attempt to retain women, and then noting the number of experienced women at the firm who find such policies effective).

²⁰⁹ See, e.g., Leopard Solutions, *2021 State of the Legal Industry Report*, 9 (recommending that firms should combat the departure of women by “mentor[ing], sponsor[ing], and support[ing] their female attorneys”); *In Their Own Words*, *supra* note 35, at 32-34 (in addition to encouraging firms to own the business case for diversity, the study provides ten other suggestions).

²¹⁰ Sybil Dunlop & Jenny Gassman-Pines, *Why the Legal Profession is the Nation’s Least Diverse (and How to Fix It)*, 47 MITCHELL HAMLINE L. REV. 129, 149-60 (Feb. 2021) (one suggestion provided is “addressing” childcare and children by “eliminat[ing] assumptions about parenthood and support[ing] women attorneys who are parents”); *NAWL Diversity & Inclusion Toolkit for Turbulent Times* (2021), available at <https://www.nawl.org/research> (among other suggestions, urges firms to collect data on compensation, hours, promotion, and origination credit and to then examine the data for patterns of bias).

But such interventions have not and cannot make an appreciable difference because they do not address the root cause. Even with some new training and programming, the firm is still the same traditional firm that is structurally and culturally hostile to women.

V. Assessing Firm Reliance on SAHSs

This Part describes three groups that should gather data and assess firm reliance on SAHSs. Those groups are bar associations (and other associations and organizations interested in women's representation in the legal profession), law firms themselves, and firm attorneys, including anyone applying to be an attorney in the firm.

Each group will utilize the data for different purposes and have different data collection scopes and tools, as discussed in the following Subparts. Nonetheless, this Article proposes that each group use identical categories of data collection regarding firm lawyers:

1. Is the lawyer male, female, or non-binary?;
2. Is the lawyer an equity partner, non-equity partner, associate on partnership track, or in a non-partnership track position?;
3. Does the lawyer have a spouse or domestic partner? If yes, does that spouse/partner work full-time outside of the home, part-time outside of the home, or not work outside of the home?; and
4. Does the lawyer have a minor child or children living in the home?

The spouse-focused questions attempt to gauge the spouse's availability to provide caregiving (to children, to the lawyer, and to address other household needs) by asking if the attorney's spouse is a full-time worker, part-time worker, or SAHS. Because these questions are not subjective and provide relevant information about a spouse's ability to be a caregiver, they are preferable to the MIT survey questions²¹¹ and other survey questions that only ask about the percentage of effort devoted to caregiving.²¹²

Before moving on to the discussion of each group's data collection and analysis role, it should be noted that the effort made by any group is not dependent on the effort of any other group. A single group has the ability to

²¹¹ See *supra* notes 115-116 and accompanying text (providing a negative critique with the MIT methodology).

²¹² See *supra* notes 129-130 and accompanying text (describing the problems with asking subjective questions about percentage of effort devoted to caregiving.).

trigger change. So, for example, if firms are resistant to engaging in self-assessment, that is fine. The data and calls for change will still catch up to them as long as at least one of the other groups pursues the issue. Apathy by all three groups is the only roadblock to change.

A. Associations and Organizations Should Assess, Rank, and Report Firm Reliance on SAHSs in Nationwide, Statewide, and Local Studies

The ABA,²¹³ NALP,²¹⁴ and NAWL²¹⁵ have all gathered data and studied the issue of women's persistent underrepresentation in law firms. All of these associations have stated an interest in advancing the cause of gender diversity in the legal profession.²¹⁶ Other organizations like the Vault and Chambers Associate rank "best firms" on the basis of various factors.²¹⁷

While none of the studies or rankings are currently studying firm reliance on SAHSs, they should. The annual studies that show the lack of progress in gender diversity in the legal profession are not particularly useful in

²¹³ ABA has produced numerous reports aimed at understanding women's underrepresentation in the legal profession. See, e.g., reports discussed at *supra* notes 30-40 and accompanying text.

²¹⁴ NALP produces an annual report compiling data regarding law firm diversity based on information provided by firms in the NALP directory. NALP annual reports are available at https://www.nalp.org/report_on_diversity.

²¹⁵ NAWL produces annual survey reports that are available at <https://www.nawl.org/research>. NAWL says that its survey is "the only national survey that collects important industry benchmarking data on the career progression and compensation of women in law firms." NAWL FAQ, available at <https://www.nawl.org/research>.

²¹⁶ See NAWL Website Landing Page, at NAWL.org (stating that NAWL's mission is "to provide leadership, a collective voice, and essential resources to advance women in the legal profession and advocate for the equality of women under the law."). NALP 2023 Report, *supra* note 9, at 1 ("NALP strives for a diverse, equitable, and inclusive legal profession." A former ABA president asserts that the ABA funds research about representation of women in the legal profession because it cares about understanding the issue. Lee Refo, *supra* note 22.

²¹⁷ According to Vault, "Vault's rankings are based on exclusive insider information from verified employees in the law industry. Each year, Vault surveys thousands of law professionals. From the results of these surveys, Vault ranks the top law firms in prestige, diversity, quality of life, and overall best to work for." See Vault webpage, at <https://vault.com/best-companies-to-work-for/law>. Chambers Associate, Associate Satisfaction Surveys 2024, <http://www.chambers-associate.com/law-firms/associate-satisfaction-surveys> (describing Chambers Associate's methodology for surveying law firm associates to compile data for various Associate Satisfaction lists).

understanding the why—with at least one study acknowledging that in recent years.²¹⁸ Studying reliance on SAHSs would fill that gap. When data shows a correlation between SAHS reliance and underrepresentation of women, this data can be a focus of advocacy for change by these organizations—as well as attorneys and clients of the firm. As for the firm rankings, including reliance upon SAHSs as a metric—and reporting that information for the ranked firms—would help firms see the correlation between gender diversity and SAHS reliance, would hopefully motivate firms to put effort into that metric, would help lawyers who do not have (or do not plan to have) a SAHS make informed decisions about the firms that they join, and would help clients choose firms.

While the associations and organizations discussed thus far in this Part are national organizations, there is no reason that state or local organizations should not get involved in the effort. Just as the state of Massachusetts' various associations banded together to study Massachusetts firm reliance on spouses and partners in the MIT Study,²¹⁹ so could other bar associations, organizations, and university partners. Local bar associations, particularly in larger legal markets, should have an interest in studying or ranking the firms in their city.

There are numerous ways survey instruments might be developed and distributed, but this discussion focuses on two broad approaches—surveys directed at lawyers and surveys directed at law firms—and some of the advantages and challenges of each approach.

1. *Surveys to Firms*

Survey instruments could be directed to law firms (such as Am Law 200 firms, largest firms in a specific legal market, or member firms such as those in the NALP directory). The surveys would ask firms to report their number of male, female, and non-binary attorneys and for each group, identify the number of attorneys in each of those groups that are partners, associates, or non-partnership track, as well as the number within those groups with spouses, their spouse's work status, and the number of minor children living in their home.

The collected data could be used to rank individual firms for their reliance on SAHSs—so that law students, attorneys, and clients could

²¹⁸ See *supra* note 21.

²¹⁹ See *supra* notes 93-96 and accompanying text.

research that information on a firm-by-firm basis. Another use of the data could be to aggregate it, report on it, and track trends over time. For example, the ABA could gather data from firms (of a certain size) nationwide and then provide a report explaining the state of the legal profession in terms of SAHS-reliance nationally and by legal market.

Law firms are capable of providing this information in response to a survey. Data about attorneys' spouses and children should be readily available to firms. Many large firms gather spouse employment information at the time an attorney is hired. For this information to be used in a survey, it would be necessary for all participating firms to gather this information at hiring and require attorneys to update it when any changes in a spouse's employment status occur. Further, attorneys in most firms already provide information about dependents to human resources.

The greatest challenge in a surveyor obtaining this data is that some firms will assert that the information is not collected, is confidential, is too onerous to report, or is not something the firm is willing to report in a survey. All of these issues are ones that firms can and will address if they see the value and ease of doing so. It will be up to the bar associations, rankings organizations, clients, law students, and lawyers to help firms see the value proposition of transparency.

2. *Surveys to Lawyers*

Another approach would be to send surveys directly to attorneys, asking individual attorneys to identify their gender, their firm role (partner, associate, etc.), and whether they have minor children living at home, a spouse, and whether the spouse works. Like the associate satisfaction surveys from Chambers Associate, these surveys could also ask attorneys to identify their firms and answer questions about the attorney's satisfaction with the firm's support for attorneys who do not have a SAHS.

Just like firm survey data, the attorney survey data could be used in two ways. The data could be aggregated and reported so that current SAHS-reliance for the nation, region, state, or legal market could be determined. With a sufficient level of attorney participation, these survey results could also be used in ranking specific firms.

There are some advantages of the surveys-to-individuals approach. First, surveyors are not dependent upon the participation of firms or the quality of data collection and reporting by firms. Second, if they wish, surveyors can follow the career paths of specific lawyers—including questions about a lawyer's decision to leave a firm. Another advantage is that surveys to

individuals can include an opportunity for both objective and subjective data collection.

In terms of challenges of surveys to individual attorneys, it may be difficult to get a sufficient response rate from a wide cross-section of those who receive survey instruments. For surveyors that wish to follow attorneys over a period of time, it can be challenging to keep those attorneys engaged over a period of years.

B. Self-Assessment by Firms of their Reliance on SAHSs

As discussed earlier, there are a number of reasons that firms may be motivated to reduce reliance on SAHSs, including interest in addressing a metric that can improve retention of women (and dual-career and single parents), as well as addressing the wishes of clients, attorneys, and prospective attorneys of the firm.²²⁰ It follows that firms should want to gather the data at least annually in order to assess whether the firm's efforts to reduce dependence on SAHSs while improving retention of women is working.²²¹ Firms will also want the data in order to respond to survey requests from associations and organizations²²² as well clients, firm applicants, and current firm attorneys interested in efforts in the area.²²³

A firm's efforts should also include exit interviews with all attorneys leaving the firm. For firms that have historically blamed motherhood for women's exits, an exit interview provides an opportunity to learn an attorney's actual reasons for taking a new position. Because there is some incentive for attorneys not to burn bridges by being too transparent about their reasons for leaving a firm,²²⁴ the exit interview needs to set a tone that

²²⁰ See *supra* Subpart IV.B. The SAHS Metric Has the Potential to Motivate Firms to Change.

²²¹ See *supra* Part IV. The Modernization of Traditional Firms (discussing the need for firms to seek the guidance and leadership of attorney-moms without SAHSs in modernization efforts).

²²² See *supra* Subpart V.A.1. Surveys to Firms (discussing efforts that could be made by organizations and associations to determine firm reliance on SAHSs).

²²³ See *infra* Subpart V.C. Firm Attorneys (as Well as Applicants to Firms) Should Gather Firm SAHS-Reliance Data as a Tool for Decision-Making, Advocacy, and Change.

²²⁴ See, e.g., Ben Grimes, *Leading with an Eye on Diversity*, LAW PRACTICE TODAY, Americanbar.org (Jan. 5, 2023) (describing the tendency of departing lawyers to sugarcoat their reasons for leaving in an exit interview); Paul White, *Understanding the Dynamics of Staff Retention*, LAW PRACTICE MAGAZINE, Americanbar.org (May 1, 2023)(describing the difference between an employee's stated reasons for leaving, what might be inferred by

encourages attorneys to be forthcoming. Firms should ask specific questions about challenging aspects about firm structure and culture and the attraction of the new destination. They should also ask for specific suggestions of changes that could have been made by the firm to retain the attorney. The exit interviews should ask about whether the attorney has children, whether the attorney has a partner or spouse, whether the partner and spouse works outside of the home, and if so, whether anything about the firm environment made it difficult for the attorney to balance work and non-work obligations.

C. Firm Attorneys (as Well as Applicants to Firms) Should Gather Firm SAHS-Reliance Data as a Tool for Decision-Making, Advocacy, and Change

Any attorney working in a firm with high billable hours can determine whether they are working in a traditional firm. Start by counting the number of partners in the firm (or office or section, if more appropriate) who *do not* have a SAHS.²²⁵ It is easy to identify traditional firms by the small number of these partners. If the firm is traditional, the next step is to understand the impact the structure has on women. Count the number of female partners in the firm (or office or section) and compare that to the number of male partners.²²⁶ Until this data is broadly available—whether through firms or surveys and rankings—this analysis is an attorney’s best method of predicting their future at the firm. This data will also help attorneys discuss and advocate for changes they need in order to reduce the firm’s reliance on SAHSs.

For applicants to a firm—whether law students or attorneys—it is entirely appropriate to ask about SAHS reliance. It is not necessary to frame the question that way, of course. An attorney should be honest about her or his interest in the topic. For example, an applicant might note, “My spouse and I both plan to have careers; are there attorneys in [this firm or

employers, and the reality which often has a strong emotional component like unfair treatment and conflict with co-workers).

²²⁵ For attorneys in firms with offices in numerous locations, it should be just as effective to make these calculations based on the office or section in which the attorney works.

²²⁶ In traditional firms, it will be easy to identify each one. Female associates in these firms likely know which female partners are moms and how those moms do it (SAHS, live-in nanny, live-in family support, etc.) and which female partners do not have children.

this practice group] with working spouses?”²²⁷ That should be the starting point of interviews that help the applicant gauge whether there the firm offers him or her a path to success there.

For any firm attorney, questions about SAHS-reliance should be easy to answer. For attorneys who are knowledgeable about the sources cited in this article, the question should provide an opening for a broader conversation about efforts the firm is making to retain women and reduce reliance on the unpaid labor of SAHSs. Subsequent questions should be more probing to learn the specifics of whether partners can succeed without a SAHS. This is not a “women’s issue.” It is an issue for any lawyer without a SAHS or plans to have one.

While many advisors have historically suggested that applicants stay away from “sensitive topics,” there is no reason an attorney or law student should shy away from respectfully discussing whether they have the tools to succeed in the firm. The more people ask these questions, the more firms will realize they cannot continue to ignore the issue.

Conclusion

*If what you have read has raised your blood pressure and made you “spitting mad”—wonderful. You’ve got spunk. You’ve got guts. You’ve got what it takes to go out after what you want. You have the basic requirements to make it as a woman lawyer.*²²⁸

This quote—from the 1974 book *Ms.-Lawyer*—is found at the conclusion of a discussion about discrimination faced by women lawyers.²²⁹ The discrimination faced today may be less brazen, but it is just as infuriating. If what you have read in this Article has made you spitting mad, you have what it takes to be part of the solution.

In order to usher in the death of the motherhood myth, we need to appreciate the reason for its staying power. The myth contains a nugget of truth—there is often a *correlation* between motherhood and a woman’s departure from a law firm. But for far too long, attorneys have allowed that

²²⁷ For those applicants who are not married, the questions may focus on the applicant’s concerns about their ability to be successful at the firm despite not having or planning to have a SAHS.

²²⁸ D.X. FENTEN, *MS.-LAWYER* (Westminster Press Books 1974).

²²⁹ *Id.*

nugget to masquerade as the cause. Even lawyer-moms have unintentionally contributed to the myth by acknowledging motherhood as a factor, while also discussing a variety of other reasons for leaving law firms. Too often, attorneys have not called out motherhood as myth and have failed to articulate the root cause of the underrepresentation of women in firms.

Through the counternarrative of traditional firms, attorneys have a simple and accurate response to assertions that motherhood is holding women back: “Motherhood is not the reason women are underrepresented in firms. The root cause is the traditional firm’s reliance on the unpaid labor of SAHSs. Most women do not have SAHSs, so women are substantially disadvantaged in that environment and often leave as a result.”

The traditional firm narrative is the response that every woman and every ally should give when a firm lawyer complains about a lawyer-mom’s lack of commitment—or when someone refers to a lawyer-mom’s status on the “mommy-track.” Explaining the failings of traditional firms is also the right retort when someone asserts that lawyer-moms are held back at firms because their spouses do not contribute equally at home.

It is time to get serious about assessing which firms are inhospitable places for lawyers who lack SAHSs. This is necessary for shifting the focus and moving towards needed change. This Article revealed that traditional firms place massive structural and cultural barriers in the way of success for lawyers without a SAHS. These attorneys—who are disproportionately female—will continue to leave as long as firms continue to look like something out of a 1950’s sitcom. Traditional firms have failed to improve retention of women through small interventions at the margins. It is time they focus on the core problem and move towards modernization.